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WESTERN CAPE HIGH COURT
EQUALITY COURT
2017 -02- 17
CAPE TOWN/KAAPSTAD
WES-KAAP HOE HOF

*Office Copy*

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

Case No.: Equality Court 3/2016

In the application of:

SOCIAL JUSTICE COALITION  
EQUAL EDUCATION  
NYANGA COMMUNITY POLICING FORUM

First Applicant  
Second Applicant  
Third Applicant

and

MINISTER OF POLICE  
NATIONAL COMMISSIONER OF POLICE  
WESTERN CAPE POLICE COMMISSIONER  
MINISTER FOR COMMUNITY SAFETY, WESTERN  
CAPE

First Respondent  
Second Respondent  
Third Respondent  
Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae

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FILING SHEET

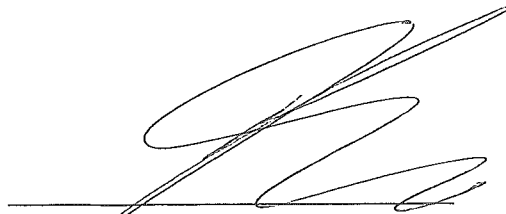
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First, Second and Third Respondents herewith file answering affidavits deposited to by:

1. Leon Rabie, dated 17 February 2017.
2. Thulare Sekhukhune, dated 17 February 2017.

The further affidavits will be emailed.

Dated at Cape Town on 17<sup>th</sup> February 2017.



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Ref: 1128/16/P12

To: **THE REGISTRAR  
EQUALITY COURT  
WESTERN CAPE HIGH COURT**

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(HIGH COURT, CAPE TOWN)**

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In the application of:

<b>SOCIAL JUSTICE COALITION</b>	First Applicant
<b>EQUAL EDUCATION</b>	Second Applicant
<b>NYANGA COMMUNITY POLICING FORUM</b>	Third Applicant
and	
<b>MINISTER OF POLICE</b>	First Respondent
<b>NATIONAL COMMISSIONER OF POLICE</b>	Second Respondent
<b>WESTERN CAPE POLICE COMMISSIONER</b>	Third Respondent
<b>MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE</b>	Fourth Respondent
and	
<b>WOMEN'S LEGAL CENTRE TRUST</b>	Amicus Curiae

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**ANSWERING AFFIDAVIT OF LEON RABIE FILED ON BEHALF OF THE  
FIRST, SECOND AND THIRD RESPONDENTS**

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I, the undersigned,

**LEON RABIE**

do make oath and state that:

1. I am an adult male police officer holding the rank of Major General and the Head: Strategic Management, situate at the head office of the South African Police Service ("*the SAPS*") in Pretoria. Prior to assuming this position, I was a Brigadier and Section Head: Performance Management, Organisational Development Component of the SAPS which is headed up by Major General Mathapama Jack Makgato.
2. The contents of this affidavit are true and correct and unless otherwise indicated or clear from the context, fall within my personal knowledge. Where I rely on information provided to me by others, I indicate the source and verily believe such information to be correct and true. Where I make legal submissions I do so on the basis of advice given to me by the legal representatives of the first, second and third respondents, which advice I



believe to be reliable and correct. I am duly authorised to depose to this affidavit on behalf of the first, second and third respondents.

3. The relief sought in this application is far reaching. As is apparent from the notice of motion:

3.1. In the first instance, a declaratory order is sought that the allocation of police human resources unfairly discriminates against black and poor people on the grounds of race and poverty.<sup>1</sup>

3.2. A second declaratory order is sought that the system employed by the SAPS to determine the allocation of police human resources unfairly discriminates against black and poor people on the grounds of race and poverty.<sup>2</sup>

3.3. A third declaratory order is sought that section 12(3) of the South African Police Service Act, No. 68 of 1995 (*“the SAPS Act”*) grants the Provincial Commissioners the power to determine the distribution of police resources between stations within their province, including the distribution of permanent posts under the fixed establishment, as opposed to just temporary posts.

3.4. The fourth order sought seeks to compel the Minister and the National Commissioner to re-evaluate the system that the SAPS uses to allocate and distribute human resources, subject to certain processes being followed.

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<sup>1</sup> NM; par 1.

<sup>2</sup> NM; par 2.

4. I am advised that the legal representatives for the first, second and third respondents will seek the leave of the Court to lead oral evidence in this matter.
5. This affidavit is structured as follows:
  - 5.1. First, I provide an overview of the constitutional and legislative framework for the delivery of police services.
  - 5.2. Second, I provide an overview of the factual basis on which the relief sought is founded.
  - 5.3. Third, I address the relevant recommendations of the Khayelitsha Commission.
  - 5.4. Fourth, I explain the allocation process in respect of police resources ("*the allocation process*").
  - 5.5. Fifth, I make submissions as to why the relief sought is not competent.
  - 5.6. Finally, I answer *seriatim* to the founding affidavit.

#### **THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK FOR THE DELIVERY OF POLICE SERVICES**

6. The SAPS is established as a security service in terms of Chapter 11 of the Constitution.
7. Section 205 of the Constitution provides as follows:

  
4 

*"205 Police service*

- (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.*
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.*
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."*

8. In terms of section 206 of the Constitution, a member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.<sup>3</sup> According to the Constitution, the national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.

9. Section 207 of the Constitution regulates control of the police service. It provides:

*"207 Control of police service*

- (1) The President as head of the national executive must appoint a woman or a man as the National Commissioner of the police service, to control and manage the police service.*
- (2) The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.*

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<sup>3</sup> Section 206(1) of the Constitution.

- (3) *The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.*
- (4) *The provincial commissioners are responsible for policing in their respective provinces-*
  - (a) *as prescribed by national legislation; and*
  - (b) *subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).*
- (5) *The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.*
- (6) *If the provincial commissioner has lost the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with national legislation."*

10. The SAPS Act No 68 of 1995 (*"the SAPS Act"*) seeks to give effect to the constitutional imperatives in respect of the police. In section 11 thereof, it provides that the National Commissioner shall exercise control over and manage the police service in accordance with section 207(2) of the Constitution. It further identifies the functions of the National Commissioner to include the following:

- 10.1. develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;
- 10.2. determine the fixed establishment of the Service and the number and grading of posts;



- 10.3. determine the distribution of the numerical strength of the Service after consultation with the board;
- 10.4. organise or reorganise the Service at national level into various components, units or groups;
- 10.5. establish and maintain training institutions or centres for the training of students and other members;
- 10.6. establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the general management, control and maintenance of the Service; and
- 10.7. perform any legal act or act in any legal capacity on behalf of the Service.

11. In terms of section 12 of the SAPS Act:

*"12 Provincial Commissioners*

- (1) *Subject to this Act, a Provincial Commissioner shall have command of and control over the Service under his or her jurisdiction in the province and may exercise the powers and shall perform the duties and functions necessary to give effect to section 219 of the Constitution.*
- (2) *A Provincial Commissioner may-*
  - (a) *subject to a determination under section 11(2)(b), delimit any area in the province and determine the boundaries thereof until the province has been divided into as many areas as may be necessary for the purposes of the organisation of the Service under his or her jurisdiction; and*

(b) *establish and maintain police stations and units in the province and determine the boundaries of station or unit areas.*

(3) *A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units."*

12. As is apparent, the regulatory framework provides for a significant degree of latitude in respect of the allocation of resources for the purposes of policing. It deliberately does not prescribe the approach that must be followed in this regard. In these circumstances, I am advised that it will be submitted on behalf of the SAPS that the only threshold that the allocation process would have to satisfy is one of rationality. This, I respectfully aver, it does; indeed, I would submit for reasons set forth in this affidavit that it also meets the threshold of reasonableness. I should further state at the outset that the SAPS accepts that if an allocation process was to discriminate unfairly, including on the grounds of race and socio-economic status, the threshold of rationality will not be met. I respectfully submit that the SAPS' allocation process does not do so and to the extent that the applicants contend otherwise, they are, with respect, mistaken.

#### **THE FACTUAL BASIS FOR THE RELIEF SOUGHT**

13. According to the General Secretary of the first applicant ("*the SJC*") (whose qualifications and experience in the area of policing are unexplained):

13.1. The allocation of police officers to police stations is irrational and discriminatory in that it provides more police officers to stations servicing rich, white populations with low contact crime rates and fewer police

officers to stations servicing poor, black communities with high contact crime rates.<sup>4</sup>

13.2. The Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha (“**the Khayelitsha Commission**” or “**the Commission**”) expressed grave concern about the system of human resource allocation which appears to be systematically biased against poor, black communities and how it could have survived twenty years into post-apartheid democracy.<sup>5</sup>

13.3. Despite the “clear recommendation” from the Khayelitsha Commission that SAPS revise its theoretical system for determining the allocation of human resources as a matter of urgency, the Minister and the National Commissioner have taken “no action” to date in response to the Khayelitsha Commission’s recommendation.<sup>6</sup>

#### **THE RELEVANT RECOMMENDATIONS OF THE KHAYELITSHA COMMISSION**

14. The Khayelitsha Commission was mandated to investigate allegations of police inefficiency in Khayelitsha and of a breakdown in relations between the community and the police in Khayelitsha.

15. Pursuant to its mandate, the Khayelitsha Commission made certain recommendations, a copy of which is attached to the founding affidavit. Of key

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<sup>4</sup> FA (Mlungwana); page 13; par 3.

<sup>5</sup> FA (Mlungwana); page 13; par 4.

<sup>6</sup> FA (Mlungwana); page 13; par 5.

importance to the present application is Recommendation 7, a copy of which I attach (for ease of reference) as "LR1". According to Recommendation 7:

15.1. The Commission has concluded that the system of human resource allocation used by the South African Police Service has resulted in two of the Khayelitsha police stations (Harare and Khayelitsha Site B) being significantly understaffed. An examination of the allocations to all police stations in the Western Cape, calculating police personnel per capita and in the light of reported crime rates, suggest that the ten most understaffed police stations are Nyanga, Kraaifontein, Gugulethu, Mfuleni, Grassy Park, Kleinvei, Delft, Lwandle and the two subject Khayelitsha police stations. This research, according to the Commission, suggests that the residents of the poorest areas of Cape Town that bore the brunt of apartheid are still woefully under-policed twenty years into our new democracy and are often the police stations with the highest levels of serious contact crime. This pattern, according to the Commission, needs to change as a matter of urgency.

15.2. Relying on the evidence of Ms Redpath, the Commission found that the reasons for this are five-fold:

15.2.1. The system for determining the theoretical human resource requirement ("*the THRR*") is highly complex.

15.2.2. The THRR is neither publicly available nor debated, even within SAPS or by the key oversight bodies, such as the national Parliament and the provincial legislature.

15.2.3. The data provided by police stations used to calculate the THRR is not necessarily accurate.

15.2.4. The weightings attached to different environmental factors may result in over- or underestimation of the policing implications of those factors.

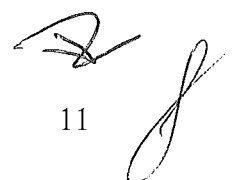
15.2.5. There appears to be no practice of checking the system against a simple per capita calculation to check for anomalies.

16. The Commission noted that the THRR system does not appear to be fully understood or accepted even within SAPS and recommended that “the system be overhauled as a matter of urgency”. Pursuant thereto, the Commission recommended that:

16.1. The Minister of Police request the National Commissioner of SAPS to appoint a task team to investigate the system of human resource allocation within SAPS as a matter of urgency.

16.2. The task team consider Ms Redpath’s expert report which contains what, according to the Commission, appears to be a workable and rational method for the allocation of police personnel, noting though that it is not the only workable and rational mechanism.

16.3. That whatever mechanism is adopted by SAPS, that it be subject to oversight by the key oversight agencies, notably the Civilian Secretariat



and, in relation to provincial resource allocations, the provincial governments.

16.4. That the system for human resource allocation within SAPS be disclosed in the SAPS annual report to Parliament as well as to provincial legislatures, and any significant departure from an allocation based on population figures and reported crimes rates should be explained.

16.5. That in the meantime, the Provincial Commissioner allocate additional uniformed police to the three Khayelitsha police stations, in terms of section 12(3) of the SAPS Act, to perform VISPOL functions, particularly to enable regular patrolling of informal settlements, in partnership with Neighbourhood Watches.

17. Many of the concerns raised by the Commission were already in the process of being attended to by the time the Commission issued its report in August 2014. I'm given to understand that Major General Brand will comment on this in his affidavit.

18. The Allocation Process is dealt with in greater detail below. It suffices for present purposes to state that the human resource allocation particularly in poor and black areas have benefitted greatly in recent years. This is borne out by, inter alia, the additional human resources allocated to these police stations. I point out that Redpath is not an expert on policing. Her theory is untried and untested; she also has no experience in policing practice. An application of her approach would impede as opposed to advance the proper resourcing of policing. I have looked at and considered Redpath's theory which only take a

few variables into account rendering it unworkable and unresponsive to the complexities of proper policing. By way of example, she places much emphasis on the table appearing at page 38, paragraph 78 of the record in terms whereof Nyanga's THRR rank is 148 and the actual rank is 146 for the purposes of the murder rate. Firstly, the table is outdated. Secondly, it fails to take into account that murder rates alone, bear no correlation to overall crime rates. Once again, this is borne out by the statistics of the Cape Town Central police station which has the highest crime rate. According to the latest crime statistics (April 2016 to January 2017) in respect of serious crime which would include murder, Cape Town Central has 14 838 serious crimes recorded whereas Nyanga had 8044 recorded serious crimes. Redpath wrongly assumes that the most reliable crime statistic is that of murder. I respectfully aver that murder is by no means the sole reliable indicator of reported crimes. Indeed, to isolate murder, distorts the picture. Moreover, no concrete data is provided in support of this contention by Redpath.

19. SAPS is compliant with the Treasury requirements on what needs to be contained in its Annual Report. I should explain in this regard that the disclosure of human resource allocation is a sensitive matter and potentially detrimental to effective policing.
20. SAPS takes its constitutional and statutory obligations seriously and addresses policing to the best of its ability within its available resources. In this regard, I am informed, additional police have been allocated to the three Khayelitsha police stations which also benefit from other forms of policing as adumbrated by Major General Brand.

## THE ALLOCATION PROCESS

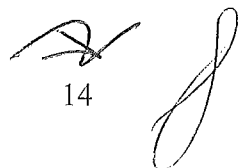
### The allocation process is dynamic and evolving

21. I state at the outset that the allocation process of the SAPS is subject to regular and annual reviews. The oversight agencies operate within their respective legislative parameters and within that, are entitled (and indeed obliged) to undertake robust oversight of both the content of the allocation process and its implementation. Indeed, the THRR states in terms (in its conclusion at page 83 thereof):

*“6.1. The SAPS is functioning in a rapidly changing environment, and these environmental changes may have a major impact on the RAG for the SAPS. The SAPS needs to monitor new developments in the environment (e.g. movement of people), and when it does, the SAPS must make appropriate adjustments to one or more steps of the RAG process if it is to achieve its targets. The extent of the required adjustments depends on the range and speed of environmental change.*

*6.2. The RAG should, therefore, be reviewed annually or biannually to enable the SAPS to include environmental changes. This does not prohibit the SAPS from reviewing the RAG more frequently. New developments in the external environment, i.e. the movement of people, large developments that occur in a given year or internal factors such as the closing of a station or establishment or a new station, are the type of causal factors which will determine whether the RAG for a particular station should be reviewed in a specific year. This review may take place subject to approval by the National Head: Organisational Development.”*

22. I am informed that the affidavit of Major General Makgato outlines the various steps being taken to ensure that there is dedicated research capacity involving experts who are able to constantly evaluate the coherence and impact of the allocation process as well as its plans, and to monitor the implementation of such plans. The applicants may contribute to such research capacity.





## The Redpath proposal does not meet the constitutional imperatives

23. I am advised that Major General Makgato also addresses the Redpath model.

The model proposed by Ms Redpath is impractical and, indeed it is no exaggeration to say that it will impact negatively on the operations of the SAPS. The proposals demonstrate her lack of expertise on the issues relating to policing generally and more specifically to fundamental services provided at police stations as well as generic staff requirements.

24. An underlying difficulty with that model is that to peg the national allocation system on population figures and crime trends alone would weaken policing significantly. The evidence of Redpath ignores the elementary requirements of policing, including inter alia the following:

24.1. The SAPS does not police people, it polices crime. Its primary objective is to assemble a policing structure and deploy resources that make it possible for the SAPS to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold the and enforce the law.

24.2. The human resource requirements associated with police stations cannot be calculated on population and crime alone. There are many variables that impact on policing demands some of which are impossible to quantify in terms of concrete percentages and numbers. The population of the Cape Town CBD for example is lower than that of Nyanga, and yet there is more crime reported in the CBD than in Nyanga.

25. Ms Redpath has been invited to demonstrate how her model would advance the objectives of policing if it does not take into account the variables that are referred to in the THRR. That invitation remains open even during this litigation.

### **An overview of the allocation process**

26. For SAPS to be successful in the fulfilment of its constitutional obligations, it must concentrate on how it can combat crime best. Ultimately, the efficiency of the police is determined according to the resources used for every core function. Jointly, all these functions contribute to the degree of productivity achieved by the organisation. In reality, the more SAPS focuses on its core functions (which are mostly performed at local level), and the closer the organisation gets to its targets in terms of resource allocation, distribution and utilisation at local level, the more effective it will become in combatting crime.

27. To this end, SAPS has developed and maintains a procedure to calculate the human resource requirements of police stations in SAPS. For this purpose, SAPS has developed an information technology based solution for the determination of the number and levels of posts for police stations. At its simplest, the system has been developed to calculate the number of posts per level required to perform the duties associated with police stations; referred to as the theoretical human resource requirements; it represents the ideal number of employees to be placed at a specific station.

28. The THRR has been developed to calculate the number of posts per level required to perform the duties associated with police stations. This is

commonly referred to as the “*ideal*” situation or theoretical requirement. In terms of the Medium Term Expenditure Framework (MTEF) posts are made available in line with the budget allocation to be allocated to all functions in the SAPS annually. However, the number of posts allocated is not equal to the “ideal” and consequently allocated posts are equally distributed between all stations and are referred to as “granted posts”. The number of granted posts is ultimately determined based on the annual budget allocation and the consequent equal distribution to the ideal allocation. According to the allocation process, determining of an “ideal/granted” establishment for the SAPS is a dynamic process influenced by various factors (variables) in the internal police environment, as well as the external environment.

29. I attach a copy of the current THRR utilised as a resource to guide the police in its allocation process, marked “**LR3**”.
30. Only the evidence tendered at the Commission has been attached by the Applicants. My statement that was furnished at the Commission together with the annexures thereto are relevant and are appended as “**LR4**”.
31. The present allocation process was preceded by the Resource Allocation Guide, which was in turn preceded by the Resource Establishment Plan (REP). The allocation process is now referred to as the THRR. This is in line with developments within the human resources field.
32. The rationale for the THRR is best understood from an internal memorandum prepared by Dr Eugene J van Vuuren dated 31 May in 2003, a copy of which is annexed as “**LR5**”.

33. The allocation process is multi-faceted. I shall reserve for the purposes of oral evidence a full analysis of the allocation in relation to each of its elements, which include: (a) community service centres; (b) crime prevention / sector teams; (c) custody management; (d) additional service points; (e) operational support which includes court services, exhibit management and general enquiries and fire arms and second hand goods and firearms, liquor and second hand goods (FLASH); (f) investigation of crime; (g) support services including general administration, financial / human and supply chain management.

#### **The theoretical allocation**

34. In summary, the allocation process with regard to: (a) crime prevention; and (b) crime investigation, operates on the following basis:

35. As stated, the allocation is first done on the basis of a theoretical requirement; in other words the ideal requirement. Simply put, if there were no budgetary constraints police resources would be allocated in accordance with the theoretical. Every year, from January to March, the Component of Organizational Development gathers information on all 1143 police stations across South Africa. The information gathered traverse a wide range determinants and includes:

35.1. Reported Crime:

35.1.1. An analysis of all reported crime over a period of four years at a particular station (a four year weighted average with the most recent carrying the highest weighting) is taken.

35.1.2. Thereafter, a ratio is applied to determine the crime prevention theoretical requirement (i.e. the number of police officer requirements). With regard to crime prevention (i.e. sector teams), one post is allocated for:

- (a) 20 (on average per month) contact crimes (crimes against a person) that have been reported.
- (b) 25 crimes against property (i.e. property related crime).
- (c) 30 contact related crimes.
- (d) 35 for other serious crimes.
- (e) 50 for less serious crime.

35.1.3. The result of the above-mentioned calculation is that a baseline figure is determined. This figure is then factored into a demographic analysis. I should explain in this regard that there are 79 demographic determinants which are factors that impact on crime prevention. The demographic determinants include reference to areas that SAPS is statutorily obliged to patrol; factors that complicate SAPS' response time in addressing crime (for instance a lack of lighting, street names and informal

settlements). Each of these demographic determinants are weighted, with the higher weighting being given to under-developed areas, and correlatively lower weighting being given to relatively developed / advantaged areas. The higher weighting (as I will explain in more detail below) is ultimately geared to ensure higher policing numbers for crime prevention in under-developed areas. The following are among the demographic determinants:

35.1.3.1. Registered facilities and includes: (a) population size that is serviced by a particular police station (this information is obtained from Stats SA as updated); (b) the area size; (c) the unemployment rate; (d) the percentage of informal population; (e) daily influx of commuters (they do not live the area but come in every day) – this information is obtained from the local municipality; (f) are there venues that host sporting (local or international events), festival and religious events (how many events per year and how many venues); (g) seasonal influx (by way of example over the December period there is a very high influx of people into the Western Cape); (h) the topography such as whether the area is mountainous, has rivers or dams (these factors bear on police accessibility and therefore reaction time).

- 35.1.3.2. Socio-economic factors which include: (a) lack of street lights; (b) lack of roads; (c) social degradation; (d) lack of telecommunications; (e) whether or not there is formal housing; if there is no formal housing access routes, lack of street names, lack of house numbers, all of these point to accessibility difficulties; (f) the number of identified gangs in the precinct.
- 35.1.3.3. Areas where people converge: (a) all transport hubs and routes, for example, airports, bus terminals, train stations; (b) overnight accommodation; (c) number of shopping malls (of different sizes), the bigger the shopping malls the greater the number of people; (d) places where people consume and buy liquor (through registered and unregistered outlets); (e) all education facilities (such as schools, universities and colleges); (f) firearm sales (requires a specific designated firearm official).
- 35.1.3.4. Places that SAPS bears particular statutory obligations to police and which includes: national key points; feed lots, abattoirs, pounds.

35.1.3.5. Smallholdings and farms which is a function of SAPS.

35.1.4. This is followed by the crime investigation analysis. As a point of departure, it warrants explanation that it is impossible to determine the precise times (standard time) associated with investigating different types of crime. The Organisational Development Component therefore engages experts who are able to provide an expert opinion on how many investigations of a specific crime (for example murder) one detective would be able to deal with on a monthly basis.

35.1.5. Thereafter, crime specific ratios are applied to determine the theoretical detective requirement. By way of example, for murder there is a ratio of 1:4 (one investigator allocated for an average of every four murder charges per month); for attempted murder there is a ratio of 1:5; for common robbery there is a ratio of 1:10.

35.1.6. This is again followed by the demographic analysis. The demographic determinants at this stage of the process are again weighted in favour of under developed areas and include primarily the distances that police need to travel to entities involved in the investigation process, for example, correctional services, department of health and forensic service laboratory. These factors are relevant due to travel time taken.



36. Thereafter, the contingency allowance is applied to cater for unavoidable contingencies for the daily working routine of every member / official. Examples of these contingencies will include reporting for and off duty, station lectures, meetings, reading / studying governance, instructions and policies, hygiene needs, procurement, interaction with other officers etc. These contingencies relate to the human resources located at police stations. So too, these contingencies may also apply to the police operational support services such as the flying squad, the canine (K9) unit, the sexual offences unit etc.
37. The contingency allowance also takes into account the personal needs and recovery from fatigue of members. Another item is compulsory vacation leave.
38. The result of the foregoing analysis results in a theoretical / ideal allocation; i.e. the allocation that would be made to each police station in an ideal world with no budgetary constraints.

#### **The second stage: the actual assessment**

39. The second phase of the process relates to the allocation of posts. This is a budgetary issue which I am advised will be dealt with the the affidavit of Major-General Nelson. I do not intend traversing this. Suffice it to point out that the budget motivated for is not granted, with the result that the ideal cannot be achieved.

#### **The third stage: the placement at police stations**

40. This is dealt with further on in my affidavit.

41. As the THRR illustrates, once a station has been determined as being disadvantaged in light of those factors enumerated above, it receives one post for every 2500 members of the community instead of one post for every 5000 members of the community in non-disadvantaged areas. This weighting has been specifically determined so as to ensure that police stations in lower economically resourced areas have a higher ratio of police officers to serve them. This weighting runs contrary to the Applicants' baseless allegations.
42. Once the national allocation is done, provinces have the responsibility of distributing the allocated funded posts. I am advised that Brigadier Preston Voskuil explains in his affidavit, the distribution of police resources within police stations is done by the Provincial Commissioner in terms of section 12 of the SAPS Act, with due consideration to the THRR and other important considerations such as crime trends and patterns. Such distribution of resources is a dynamic and flexible process; it is by no means rigid.

**There is no merit to the claim of unfair discrimination**

43. The applicants do not allege that the allocation process is, on its face racially discriminatory. As I understand the complaint, it is that the allocation process in its application results in a racially skewed allocation of policing resources. Construed as such, I am advised that there is no reliance on direct racial discrimination.
44. The allocation is not a static and rigid set of variables that are immutable. It is flexible and is subject to constant reviews and adjustments. While it is

accepted that the allocation process is by no means perfect, it is denied that it is racially discriminatory in its application. It is also denied that it does not allocate sufficient police resources to police stations in accordance with need but race. Evidence will be given at the hearing of this matter to demonstrate the efficacy of the allocation process in the management of police resources.

45. A proper examination of the allocation process demonstrates that it does not utilise the variable of race to determinate the allocation of resources to police stations. However, the allocation process is implemented within policing communities that were established in accordance with the objectives of racial segregation under the apartheid system of government.

46. I can state without reservation that on its terms race is neither a variable created by the allocation process nor a variable that promotes racialised allocation of resources. Racialised settlement patterns which require policing services exist by virtue of the apartheid settlement planning. Policing is conducted in all communities and within the racialised settlement patterns. The allocation process is therefore not racially discriminatory because it is implemented within a social environment that is racialised. The fact that black communities exist in the form described by the applicants is because of the racialised human settlement planning of the apartheid government and not as a result of the allocation process.

47. Given that the allocation process on its terms does not rely on racial variables, the case of the applicants must therefore be that the allocation process

discriminates on the basis of race in the manner that it is applied (indirect discrimination). This requires evidence of its implementation.

48. As to the claim of indirect discrimination, as is apparent from the explanation that I have given, the factors considered are specifically weighted in favour of a higher weighting to under-developed areas.
49. The first variable that impacts on allocation is the calculated demand (i.e the THRR). The most important question that must guide an allocation process is how many police officers are required to perform policing tasks? What resources do they require to perform effective policing work? What is the legal environment that must be complied with relating to safety and labour relations? What skills are required to perform the policing tasks?
50. As regards the complaint that the application of the allocation process, results in racial discrimination, it must be remembered that apartheid infused every part of our social, political and economic life. The apartheid spatial planning determined how and what resources were deployed to communities of black people. The allocation process is the best attempt at solving the policing problems created by the apartheid spatial planning which segregated communities according to race. The allocation system does not result in racism but is a product designed to counter the effects thereof and ensure an equitable distribution of resources based on the policing demand.
51. Finally, it is critical for the court to appreciate that THRR is not unique to South Africa. I attach a copy of a document prepared by Jeremy M Wilson and Alexander Weiss titled "*A Performance-Based Approach to Police Staffing and*

*Allocation*” as “LR6”. The guide proceeds from the premise that staffing police departments is a continuous challenge and one that has become more complex with the increase in policing needs. I am advised that the salient aspects of the document will be highlighted during argument.

52. It is clear from the above that the applicants have proceeded from an incorrect conceptual premise in their criticism of the allocation process. The applicants’ contention that the national office directs how specific policing functions must be performed and the resources required to perform those functions within the provinces, is with respect, erroneous. It arises from a misconception that section 12 of the SAPS does not give the Provincial Commissioners the power to distribute police resources in accordance with provincial crime trends and priorities. That notion is the basis on which the applicants seek the declaratory order relating to section 12 of the SAPS Act.

53. In light of the above, it is clearly not necessary for the court to direct the Minister to revise the THRR. The THRR is revised on an on-going basis, has never been applied rigidly. It is a necessary guide to ensure that the SAPS meet the constitutional requirement to establish a police service that is structured to function at the national and provincial level, and where appropriate the local government levels.

#### **KEY MISCONCEPTIONS UNDERPINNING THE CHALLENGE**

54. The first fundamental misconception is that the applicants focus on: (a) a single crime, being murder (as a determinant of other violent crime); (b) a single

correlation of police officers to population. The position however, as I have sought to demonstrate is far more complex. In particular:

54.1. A proper analysis of police resourcing cannot be undertaken on the basis of a consideration of a single crime, being murder, as the applicants' contend. This is inconsistent with section 205 of the Constitution. The approach adopted by SAPS is a consideration of all crime, with a higher weighting afforded to contact crimes (i.e. violent crimes). An exclusive focus on murder carries with it the inevitable consequence of insufficient regard being had to other crimes, and an attendant increase in those crimes if not adequately catered for. It also ignores the reported crime statistics in relation to other crimes.

54.2. Its single focus is a correlation of police officers to population. This will yield an untenable outcome because it ignores the dynamics associated with policing in specific environments. By contrast, the THRR focuses on all the variables that influences policing. As I have explained, the primary factor in the initial assessment of resource allocation is the prevalence or otherwise of all categories of crime; this vital consideration is ignored on the applicants' approach.

Crime / Population	Cape Town Cen	Nyang	Ling/W est	Gugul et	Mfulen	Delft	Kraai/f	Harare	Khayelit
<b>Murder:</b>	10	250	37	118	111	148	116	149	155
<b>Serious Crime</b>	13 129	6 941	2 716	3979	4672	4498	6678	4 612	5 569
<b>Population</b>	39 078	224 059	71 476	137716	128771	170924	183885	191580	171 346
<b>Ideal / Theoretical</b>	878	499	218	288	398	485	533	368	476
<b>Approved Posts</b>	598	325	179	226	218	258	288	239	318
<b>Actual Posts (Posts that are funded but not filled for a variety of</b>	559	308	157	208	209	236	251	226	295

reasons including death, transfers, injuries)									
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55. The second fundamental misconception in the applicants' criticism of the allocation process is the fact that they appear, as the Khayelitsha Commission did, to proceed on the incorrect premise that the allocation of police resources in the police stations is done through the national office of the police service. This is not so.

56. The SAPS, as required by section 205(1) of the Constitution, must be structured to function in the national, provincial and, where appropriate, local spheres of government. The SAPS Act is the legislation envisaged in section 205(2) of the Constitution, which establishes the powers and functions of the police service and 'must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.' The allocation of police resources is aimed at achieving the objects set out in section 205(3) of the Constitution. The allocation of police resources must be directed at ensuring that the police service are able to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

57. The national management of the SAPS takes into account the provincial needs and priorities. Viewed in this context, there are two critical phases in the allocation process. The first phase focuses on determining the theoretical human resource requirements of police stations which is facilitated by Head

Office. The second phase includes the distribution of funded posts facilitated by the provincial office. I understand that this aspect is addressed in the affidavit of Brigadier Preston Voskuil who is responsible for Organisational Development in the Western Cape Province. I will re-emphasise the basic principles that govern the allocation of resources from the national perspective and leave the process of allocating police resources to the police stations in the provinces to Brigadier Preston Voskuil.

58. In order to calculate the human resource needs of the SAPS, it developed an information technology-based solution for determining the number of posts and post levels for stations; the content of which I have already explained. The purpose of the system is to calculate the number of posts per level required to perform the duties associated with police stations.
59. The third error underpinning the applicants' complaint is that this information technology-based solution is discriminatory on the grounds of race. At the outset, I must state that the charge that the system in terms of which police resources are allocated is motivated by racial considerations is without merit. There is nothing in the allocation process that refers to the racial identity of the police station or the persons it serves for purposes of allocation.
60. The fourth misconception is the allocation process is discriminatory in its impact / application. For reasons already addressed, this is not so. I emphasise that it is specifically designed to be weighted in favour of poorer areas.
61. The fifth misconception underpinning this application is that the allocation process is a fixed, rigid and inflexible model. Nothing could be further from the



truth. I testified at the Khayelitsha Commission on the resource allocation theory and its application. I made it clear that the SAPS has never contended that the allocation process is a perfect model for the allocation of police resources. I testified that the allocation process is under constant revision and has never been applied in a rigid and uncritical manner. Having made that clear, I specifically invited Ms Redpath and others who had an interest in assisting with the formulation of an improved allocation process, to share their views and research with the SAPS. That invitation was not taken up by Ms Redpath and/or anyone else. One would have thought that had the applicants held a genuine interest in the allocation of police resources, they would willingly have seized at the opportunity to assist the SAPS. Instead, they have chosen to follow the litigious route and are pursuing a case which, I am advised, falls outside of the parameters of the Equality Act.

62. In the course of this litigation, the SAPS extended a further invitation to Ms Redpath to present her proposed model to the SAPS. That offer has also not been taken up but nonetheless remains open. It is clear that the recommendation by the Khayelitsha Commission, which the applicants now seek to convert into a court order, was not necessary in light of the evidence that I had presented to the Commission. It is furthermore neither necessary nor desirable for the court to interfere with the allocation system of the SAPS because this would deprive the SAPS of the necessary flexibility to revise its policy annually and to take into account new variables. Any interference with the allocation process will inure to the detriment of the very communities which are allegedly under resourced.

63. Without meaning any disrespect, I am of the view that the Khayelitsha Commission failed to appreciate the flexibility with which the allocation process is implemented. The applicants similarly lose sight of this important fact.
64. I understand that the affidavit of General Makgato will demonstrate that Ms Redpath's criticism of the theoretical model and its application, shows a basic misconception not just about the model but its importance in ensuring that the *"national police service is structured to function in the national, provincial and, where appropriate, local spheres of government"*.
65. The basic tenets of the SAPS' allocation process cannot be criticised as a tool for advancing a racially discriminatory allocation of police resources. This is manifest from the affidavits filed on behalf of the first to third respondents.

#### **THE RELIEF SOUGHT IS NOT COMPETENT**

66. I am advised that the relief sought before this court infringes the principle of separation of powers, which issue will be addressed further in argument at the hearing of the matter.
67. For present purposes, I am advised that the relief sought before this court is incompetent on that basis alone. The allocation of resources for policing is a pre-eminently policy driven, context specific, polycentric and a very technical and scientific exercise. For this reason, alone, I am advised that this court ought to exercise caution in the adjudication of this matter.

68. I now turn to the allegations in the founding affidavit. All allegations made in the founding affidavits are denied to the extent that they are inconsistent with the content of this affidavit or any of the other affidavits filed on behalf of first, second and third respondents.

## **ANSWER TO THE FOUNDING AFFIDAVIT OF PHUMEZA MLUNGWANA**

### **AD "INTRODUCTION"**

#### Ad paragraphs 1 and 2

69. Save to deny the truth, correctness and personal knowledge of all of the allegations made in the affidavit under reply, the content of these paragraphs are not disputed. I do not accept that Ms Mlungwana has personal knowledge of the allegations made in the founding affidavit or indeed that she has the requisite expertise and qualifications to address the issues that she purports to address in her affidavit.

#### Ad paragraph 3

70. It is admitted that the application is in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000 ("**the Equality Act**") for the relief set out in the Notice of Motion. It is denied that the application has established a factual and legal basis for the relief sought. It is particularly denied that the policy of allocating police resources is irrational and discriminatory. Indeed, the most important factor considered in the allocation of

police resources by the provincial commissioners to police stations is available police resources, density of crime and crime trends.

71. It is also denied that the allocation process provides more police officers to stations serving rich, white populations with low contact crime rates, and fewer police officers to stations serving poor, black communities with high contact crimes. I refer to what I have already stated in this regard.
  
72. The lack of safety in townships which are populated by large numbers of black people is not due to the discriminatory allocation of police resources. The high contact crime rates in black communities are caused neither by the allocation process nor are they a reflection of inadequate police resources being allocated to them. The crime generators in black communities are well-known. They include underdevelopment in communities, lack of proper or adequate housing, lack of employment opportunities, poor schooling environment, lack of general amenities, including health care facilities and entertainment.
  
73. The difficulty with the approach of the applicants in this matter is to assume that when more police resources are deployed in black townships, that would necessarily result in a reduction of crime rate. As was testified to during the Khayelitsha Commission of Inquiry, the socio-economic and political instability caused by the lack of economic opportunities, proper human settlements with adequate amenities of life cannot be solved by a deployment of large number of police. That too, could become a major political problem as the SAPS could be accused of targeting poor black communities for policing. The deployment of police resources is but one factor in the myriad of factors that could bring

crime rates down. The suggestion that if more police officers were deployed to police poor black communities in circumstances where service delivery protests were a constant factor, is to possibly create a police state in those communities.

74. It is denied that the reason why black communities are less safe and more at risk of crime is not due to the alleged racially driven allocation of police resources. The reason why black communities feel unsafe is because there is no adequate human settlement, or housing opportunities, no employment opportunities, no business or work opportunities, poor health care and schooling infrastructure.

75. I accept that policing in the socio-economic and political environment of black communities is difficult. What makes it difficult is that the crime generators cannot be policed by the SAPS only but must be resolved by a variety of stakeholders responsible for the overall development of these depressed communities. At the hearing of this application, the SAPS may, if required, secure evidence to demonstrate the importance of a multi-disciplinary and multi-stakeholder approach to policing areas that are densely populated, without proper or adequate road and lighting infrastructure, road marking, proper housing settlements and lack of general amenities.

Ad paragraph 4

76. It is simply not correct that the allocation process is a relic of the apartheid system. What is a relic of the apartheid system are the human settlement patterns without adequate infrastructure to perform proper policing functions. It

is the fact that black communities remain deprived of socio-economic opportunities and therefore susceptible to high crime rate that is a problem. While it is important that resources be allocated to police stations where there is a high crime rate, it is a fallacy that more allocation will necessarily result in the reduction of crime.

77. The finding of the Commission also emphasised the complexity of policing in the black communities as a result of the unique crime generators involved. It recognised that overcrowding, lack of proper road infrastructure, adequate housing, lack of employment opportunities add to the complexity and burden of policing. General Lamoer wrongly conceded that the allocation system was irrational. He had no basis in fact or law for making such a submission. The allocation process is explained by me from which it is manifest that there is nothing irrational about it.

Ad paragraph 5

78. It is admitted that the Khayelitsha Commission recommended that the theoretical system for determining the allocation of human resources as a matter of urgency. Regrettably, the Khayelitsha Commission did not make any recommendations to guide the process of reviewing the theoretical system. Regrettably too, is that the Khayelitsha Commission, as the applicants, appears to have misunderstood the system in terms of which human resources are allocated. More importantly, the Khayelitsha Commission appears to have approached its recommendations on the basis that the allocation system done through the theoretical model is responsible for the actual deployment of police

resources to police stations. The model is simple which I understand is explained in the affidavit of Major General Makgato and is done within a budget based on estimates generated from information gathered from the work done by the police in police stations. More importantly, the allocation done by the national police service under the management and control of the National Commissioner is intended to provide police resources to Provinces, who under the control of the Provincial Commissioners, must make the necessary deployments according to the needs and priorities of the province to the relevant police stations. The role of the National Commissioner is to provide strategic guidance but in no way fetters or interferes with a Provincial Commissioner's determination of how the allocated resources are deployed in the police stations. The allocation of police resources done by the national police service provides the provinces with the resources to do the distributions.

79. The SAPS is constantly engaged in revisiting the allocation system and has never applied it with any rigidity. The system is applied in a manner that gives the police the ability to make the first distribution of resources. When the police resources are in the provinces, the Provincial Commissioner has the flexibility to deploy these allocated resources to follow the crime pattern as determined in each policing precinct.

80. I can, as I did when I testified before the Khayelitsha Commission, state again that the SAPS is keen to get the best allocation system there can be, and will afford any stakeholder the opportunity to influence it on the best models available on the allocation of police resources. I have examined the proposals made by Redpath on the allocation of police resources. I am unable to agree

with her. She has neither generated a model nor provided a rationale that supports her primary view that crime and population are the most important factors in the allocation process. The approach of Redpath is unhelpful in determining the human resource requirements for the SAPS on any scale. Firstly, she assumes that the existence of crime and population is sufficient to determine the allocation, but does not deal with the specifics required to perform policing functions and services. Second, her approach misses the fact that budgeting for the police service has various components that must be taken into account in order to ensure maximum utilisation of the allocated resources; she fails to have regard to the full conspectus of crimes that must be policed. Third, her crime-population theory does not assist with the question, what is needed to perform effective policing because it does not take into account the specifics of policing. Finally, her proposals fail to demonstrate a link between the different strands in the decision making processes involving in the management of the police. For example, she conflates the allocation done under the control and management of the National Commissioner and the actual deployment made by the police under the control and management of the Provincial Commissioners. She fails to appreciate that deployments are done on a dynamic basis and primarily follow crime trends and not population or race.

81. The Redpath model is unscientific and unhelpful to determine the actual police budget – for example, the specific variables necessary to meet the burden of policing.



82. That said, the SAPS again extends its invitation to Redpath to provide her model and apply it to the SAPS allocation system so that it can again be interrogated to determine whether it could be used to improve the allocation of police system.

Ad paragraph 6

83. It is true that policing in poor areas is difficult. However, the Khayelitsha Commission findings have equal application to the housing situation, the health care situation, the schooling facilities and general employment opportunities. It is important to appreciate that the socio-economic and political challenges of a society emerging from conflict cannot be cured simply by deploying vast numbers of police officers. The vestiges of the apartheid system of government permeate every social, economic and political environment. It is naïve to believe that the solution of the apartheid system is in the allocation of police resources.

84. I do not accept that the applicants have demonstrated that police stations with the highest levels of serious contact crimes are the most under-policed. Indeed, on the applicants' own approach, they do not analyse all serious contact crimes but limit themselves to murder.

Ad paragraph 7

85. I am aware of policing challenges across all South African communities but deny that the reason for such policing challenges is racial. High crime levels in these communities are caused by many factors. The lack of police resources

may well compound the situation but it is an uncritical view to contend that if the allocation of police resources is fixed, then all the other issues will be fixed. The lack of resources is not the cause of the upsurge in crime.

Ad paragraph 8

86. The allegations in this paragraph are admitted save for the following. The first stage of allocation is done at the national level to assess the human resources needs to perform police services. The theoretical determination resolves the question of how many police officers you need to perform policing functions in the police stations across South Africa in all the provinces. The actual allocation resolves a different question. It is how you allocate actual police resources within the allocated budget. The second stage of the allocation involves different variables to that of the first because it involves the actual deployment of police resources within police stations. The third stage involves the deployment of police resources under the management and control of the Provincial Commissioners to specific police station. This stage of allocation is driven largely by crime trends or density and is done under the management and control of the Provincial Commissioners. It is this allocation system that takes into account crime trends.

87. It is clear that a proper allocation system will always have the theoretical component and the actual allocation. This approach is consistent with the best organisational development systems involving assessing the human resources needs of organisations.

Ad paragraph 9

88. The content of this paragraph is denied. I respectfully aver that at neither of these stages do the results unfairly discriminate on any of the grounds alleged including those of irrationality and racial discrimination.

Ad paragraphs 10 to 13

89. I note the content of these paragraphs and say the following in response:

89.1. First, for reasons stated I am advised that the relief sought is not competent. Simply put, there is no basis for active judicial supervision of a policy matter lying exclusively within the domain of the executive. The principle of separation of powers would be trumped if such judicial supervision were ordered.

89.2. Second, the applicants have demonstrated no factual basis to support the relief sought.

89.3. Third, the applicants have made no concrete suggestions on how to improve the allocation process. The applicants have also not identified the alleged discriminatory aspects of the allocation process and nor have they identified ways in which those alleged discriminatory aspects of the allocation of resources within the Western Cape may be remedied. I reiterate, the SAPS is not opposed to the revision of its allocation process; it is however not appropriate for this to be done under the supervision of the court order.

**AD THE "PARTIES"**

**Ad “The Applicants”**

Ad paragraphs 14 to 20

90. I have no personal knowledge of the allegations made herein which I do not place in dispute.

Ad paragraph 21

91. I note the interest of the EE but deny the allegations of irrationality and discrimination.

92. As is apparent from the THRR, an increased weighted loading is given to areas depending on inter alia, the number of registered students at schools. As explained, this is ultimately geared towards ensuring a greater allocation of police resources to such areas.

93. I am advised that the submissions made in this paragraph will be addressed in argument at the hearing of this matter.

Ad paragraph 22

94. I do not place the applicants’ standing to institute these proceedings in issue. I do however deny the factual allegations of a discriminatory distribution of police resources or indeed that there is a distribution of resources that perpetuates rather than remediates the effects of apartheid.

**Ad “The Respondents”**

Ad paragraphs 23 to 26

95. I note the content of these paragraphs.

**AD “FACTUAL BACKGROUND”**

Ad paragraph 27

96. I note the content of this paragraph.

**Ad “Safety and Justice Campaign”**

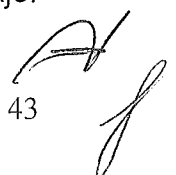
Ad paragraph 28

97. The campaigns of the applicants are noted and even appreciated by the SAPS. I however reiterate, campaigns on policing alone do little to improve the living conditions of the communities and ensuring that there are better work opportunities. The problem with focusing only on crime prevention and policing is that the socio-political and economic context in which policing takes place is not considered.

98. The SAPS has a number of similar campaigns which it has mounted in these communities.

Ad paragraphs 29 and 30

99. The crime statistics relied on by the applicants relate to 2013/14. While I accept that the murder statistics are unacceptable, it must be emphasised that murder is but one of the many crimes that are policed. I am advised that Major



General Sekhukhune will state in his affidavit that murder is a difficult crime to prevent or police because it rarely occurs in the full view of police patrols or where there is police visibility. Most murders happen in homes or social environments such as shebeens and often occur between people who know each other. Arguments are often the trigger.

100. The question that should concern all the stakeholders is why there are high murders in "*poor and working class Black areas*". In answering this question, it will become clear that police allocations have nothing to do with the increase in the crime of murder. An answer to that question will also give guidance on how such crimes may reasonably be policed. While the statistics show that the crime of murder is high, it is also an indicator of the environmental factors responsible for the generation of crime. The solution to this problem is not police allocation but a multi-disciplinary approach involving various stakeholders, including the community members affected by these crimes.

101. It is unhelpful to single out policing as a single source of security because not all crime prevention requires policing.

Ad paragraph 31

102. The allegations in this paragraph are not entirely correct or accepted. An increase in murder does not necessarily reflect an increase or prevalence of related crimes. The duty of the police involves all crimes. The allocation of police resources is done within the available resources and is directed at meeting the entire burden of policing. While these areas show an increase in violent crime, a number of issues must be recognised. The first is that the

police deployments to those areas increased. Despite this, the crime levels involving violent crime also increased.

103. I am advised that the averments made in the preceding paragraph will be confirmed by Brigadier Preston Voskuil.

Ad paragraph 32

104. The allegations in this paragraph are admitted. The Constitution imposes a policing duty on the SAPS for everyone, including the vulnerable members of our society.

Ad paragraph 33

105. The allegations in this paragraph are admitted. The SAPS has, I respectfully aver, been taking reasonable measures to ensure that policing services are provided in all communities. Building safe communities however extends far beyond the SAPS. The SAPS is solely responsible for policing but the burden of policing would be significantly improved if all the other stakeholders played their role effectively. For example, if there were enough lights, adequate road infrastructure with proper markings on houses, gainful employment opportunities for the youth and others; these would all contribute to safer communities.

Ad paragraph 34

106. The allegations in this paragraph are noted.

Ad paragraphs 35 and 36

107. The contents of the survey conducted by Mthenthe Research and Consulting Services are noted. Police deployments are important and may well alleviate the fears experienced in these communities. However, an increase in police deployments which is not matched by improvements in the way of life of poor communities, will not necessarily lighten the burden of crime.

Ad paragraphs 37 and 38

108. The allegations in these paragraphs, of which I have no personal knowledge, are noted.

Ad paragraphs 39 to 44

109. The allegations in this paragraph are noted. It is unclear how these facts are relevant to the case of the applicants involving what they perceive to be insufficient or inadequate police deployments. The Khayelitsha Commission was not established to determine whether there were insufficient police deployments in poor areas but whether there was a breakdown in policing in the targeted areas.

**Ad “The Khayelitsha Commission”**

Ad paragraph 45

110. The allegations in the paragraph are noted.



***Ad "Process"***

Ad paragraphs 46 and 47

To the extent that the applicants ascribed responsibility for police resourcing to me, this is denied. The remaining allegations in the paragraphs are noted.

***Ad "Findings"***

Ad paragraphs 48 and 49

111. The content of these paragraphs is admitted only to the extent that it accords with the Report of the Khayelitsha Commission.

112. I am advised that the recommendations of the Khayelitsha Commission are addressed in the affidavit of Major General Brand.

Ad paragraphs 50 to 55

113. While the Khayelitsha Commission found that the allocation system is irrational, it made no attempt to suggest a model that would remove the alleged irrationality of the current system.

114. It appears that the Khayelitsha Commission did not appreciate the SAPS model; instead, discrediting it as complex in relation to specific stations. The point of the matter is that if the specific stations required more police resources, the Provincial Commissioner was entitled to move resources around or even request more resources from the National Commissioner. I am advised that

the affidavits of Major General Makgato and Brigadier Voskuil will demonstrate that crime is not eliminated but reduced, an increase in police deployment may have a temporary impact on one particular crime but not in all crimes.

Ad paragraph 56

115. The Khayelitsha Commission does not show how there was an unequal distribution of resources leading to insufficient human resources being allocated to the Khayelitsha police stations. In other words, what in the system of allocation produced the alleged. Police resources must be allocated equally to all provinces in accordance with the available police resources. Within provinces, the Provincial Commissioner must decide on the deployment of those allocated resources. Such deployments differ from station to station depending on the crime trends or density. If this was not being done prior to the Khayelitsha Commission, that was because of a misinterpretation of the powers of the Provincial Commissioners to deploy the allocated resources in accordance with the crime trends or density of the particular policing area.

116. It is denied that the understaffing problems are a result of the application of a biased THRR.

Ad paragraph 57

117. Regrettably, the Khayelitsha Commission did not identify the particular alleged mischief in the THRR responsible for a biased understaffing of human resources in the specific police stations.

118. There is a difference between inefficient utilisation of police resources and insufficient police resources. While it is accepted that there is understaffing in numerous police stations, it is denied that such understaffing is necessarily the cause of an increase in crime.

119. Understaffing may lead to inefficiency in carrying out a particular type of policing serving but is not a cause of an increase in crime. The problems pointed out by the witnesses in Khayelitsha do not support the conclusion that the THRR is biased or discriminatory. The evidence pointed to difficult policing challenges and inefficiencies but did not demonstrate that such inefficiencies were responsible for an increase in crime. A failure to conduct a proper police investigation of a crime is not an indication of a defective allocation of police resources. It must be emphasised that policing is delivered within a finite pool of available resources. This, of necessity results in an allocation that is less than what is required.

Ad paragraph 58

120. The allegations in this paragraph are admitted. It must be emphasised that according to the Commission “[a]ppropriate staffing levels may be a necessary condition for effective and efficient policing, but they are not a sufficient condition for it”.

***Ad “Recommendations”***

Ad paragraph 59

121. It is admitted that the Khayelitsha Commission recommended that the Minister of Police requests the National Commissioner to appoint a task team to investigate the system of human resource allocation within SAPS as a matter of urgency:

121.1. Thus, despite the Recommendation not specifically stating the scope or terms of the revision required (nor identifying the alleged mischief); this was left to the appropriate functionaries to decide. The Khayelitsha Commission did not identify the specific defects in the current allocation system requiring revision but stated in very broad terms why a revision was necessary. The Khayelitsha Commission also overlooked the evidence of the SAPS that the allocation system is revised regularly by the SAPS to take into account new variables, to de-emphasise some and emphasise others. In any event, the recommendation of the Khayelitsha Commission does not support the judicial supervision of the revision process envisaged in the relief sought by the applicants.

121.2. The SAPS proceeded to implement the recommendations of the Commission without determining whether they were in fact binding or not. This is not an issue which the applicants address in their papers. They accept that the recommendations are indeed binding.

121.3. The Khayelitsha Commission found that there was a failure to conduct regular patrols due to lack of resources. This finding may well point to inefficiency in the utilisation of allocated police resources and not a defect in the THRR. The SAPS cannot be at every place all the time.

121.4. Many of the recommendations of the Khayelitsha Commission have been attended to or are in the process of being attended to as, I understand, are shown in the affidavits of Major General Brand and Brigadier Voskuil. It is was brought to my attention that the applicants are part of the task teams that have been established to give effect to some of the recommendations of the Khayelitsha Commission.

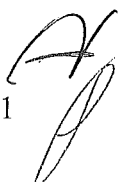
**Ad “Engagement with the Respondents following the Khayelitsha Commission”**

Ad paragraph 60

122. I note the campaigns that the applicants embarked on for the implementation of the Commission’s recommendations. There was however no need for this because the SAPS was always willing to engage with communities over improvements needed for effective policing. The picture painted in this paragraph does not accord with the evidence of the applicants’ own involvement in the processes undertaken to give effect to the Khayelitsha Commission.

Ad paragraph 61

123. I am not aware of these campaigns; I am advised that the affidavits of Brigadier Voskuil and Major General Brand will show that the SAPS is engaging with all stakeholders to come up with policing strategies that are fit for the policing areas.



Ad paragraphs 62 and 63

124. I understand that the picture painted in the paragraph does not accord with the facts and evidence in the affidavits of Brigadier Voskuil and Major General Brand. I refer to what is stated in those paragraphs.

Ad paragraph 64

125. It is denied that there is a special or specific duty to account to the applicants for the policing duties that the SAPS undertakes in the respective communities. It is denied that the SAPS has failed to give account of their policing strategies in the communities referred to.

126. Once more, I am informed that the affidavits of Brigadier Voskuil and Major General Brand will address the measures being taken to ensure that policing services are provided efficiently and accountably.

Ad paragraph 65

127. The implementation of the recommendations of the Khayelitsha Commission lies with the SAPS, more particularly with the Minister. That much is clear from section 206(5) of the Constitution. There is no finding that imposes an obligation on the SAPS to perform its functions in accordance with the dictates of the applicants. In any event, it is clear that the Minister and the SAPS are engaging with stakeholders to find lasting solutions to the policing challenges.

128. The activities of the applicants in ensuring that policing is improved in these areas is commendable, but it must always be understood that the SAPS is



responsible for the duty to provide policing services in accordance with the Constitution and the law. The SAPS will value input from private or public persons on how policing should be structured and improved.

Ad paragraph 66

129. The content of this paragraph is noted.

Ad paragraph 67

130. The National Commissioner's response was correct and the applicants are unable to establish a legal fault in this response.

131. The recommendations of the Khayelitsha Commission while providing a useful reflection on the work of the police does not prescribe to the Minister or the SAPS on how to address the challenging policing responsibilities. As can be seen from the responses of the SAPS, the primary objective is to ensure that it is able to conduct policing within the law, within the budget as effectively and efficiently as it can. The suggestion that the SAPS is not interested in engaging with private or public stakeholders is unfortunate as it does not accord with the reality. Whatever interests the applicants have on the issue of policing, it must always be appreciated that the Constitution and the relevant legislation gives the duty to provide policing services to the SAPS.

Ad paragraph 68

132. It is denied that the allocation process is irrational and racially discriminatory.

The recommendations of the Khayelitsha Commission did not change the legal

framework within which the SAPS must carry out its duties. These were recommendations and must be implemented with the necessary adjustment and not slavishly. As can be seen, the Khayelitsha Commission could not and did not prescribe to the SAPS how to design and implement its allocation system.

Ad paragraph 69

133. I am advised that the Minister is implementing the recommendations of the Khayelitsha Commission with the necessary adjustments and not slavishly. He is not bound by the recommendations but has taken upon himself to ensure that the recommendations are implemented with the necessary changes. For example, the recommendation to revise the THRR was not necessary because the SAPS constantly revises its THRR to ensure that it is relevant to the policing responsibility.

134. I have no knowledge of why the Minister of Police has not responded to the demands of the applicants.

**AD “THE INTERSECTION OF CRIME, RACE, POVERTY AND POLICE”**

Ad paragraphs 70 and 71

135. The allegations in this paragraph are noted. I am advised that the proposals of Redpath are more appropriately dealt with by Major General Makgato to the extent that they are presented as an alternative to the THRR and by Brigadier



Voskuil to the extent that they purport to deal with allocation of police resources within the Province by the Provincial Commissioner.

136. It is however denied that the model advanced by Redpath will solve policing problems in the areas of high crime rates. The model of Redpath has not been tested for the conclusions contained there to be accepted as correct. Until Redpath accepts the challenge to demonstrate the efficacy of her model, it remains an interesting but untested model. The SAPS model has been tested with some remarkable successes.

**Ad “Western Cape”**

Ad paragraph 72

137. The content of this paragraph is noted.

**Ad “Theoretical v Actual”**

Ad paragraphs 73 and 74

138. It is admitted that Redpath analysed the actual allocation of police resources and offered some interesting observations. I have summarised what the THRR model is intended to achieve. It guides the allocation of police resources by taking into account what is ideal and using that to make the actual.

139. Redpath appears to be uncertain about the fundamentals of the THRR and her conclusion that the allocation system prejudices townships is a matter of preference than principle. Her preference for higher allocation of police



resources to township areas is evidently linked to the applicants' main campaign for more police resources to be deployed in these areas. However what she is unable to do is to set out a model for the distribution of police resources to all policing precincts that cover all policing services.

140. While she articulates problems with the actual calculation of policing needs, she does not regard this approach as irrational. It is self-evidently rational for those allocating policing resources to enforce such allocation on the basis of quantified needs.

141. Redpath does not offer an alternative method of calculating policing needs for the ideal and thereafter calculating policing needs within an allocated budget.

142. Whatever model implements, the calculation of police needs is unavoidable. Equally unavoidable is the determination of those needs on the basis of ideal and actual. The variables relied on by the SAPS are rational and cannot be ignored in any allocation model. Once more, I extend my invitation to Redpath to provide the SAPS with her model as applied. If her model is able to provide effectiveness in the allocation process, it will be considered and possibly even adopted. However, as things stand, Redpath's model does not represent the best allocation process for the police to adopt.

143. I do not agree with Redpath's conclusions and refer to what I have stated.

***Ad "Seven worst stations"***

Ad paragraph 75 to 79

144. The conclusion that the applicants seek to draw from the statistics is that allocation of police resources should be done on the basis of crime; simply put, where there are high levels of crime there should be higher levels of police deployments.

145. In an ideal situation, the conclusion is correct. However, the work of the SAPS cannot be concentrated only in high crime areas. The policing function of SAPS must extend to everyone, whether there is higher crime or not. Where there is a high level of violent crimes, more deployments are made to those areas within the available resources. However these deployments are not made in a manner that deprives other stations from receiving policing services.

146. The police that are deployed in high murder rate communities do not only police murder. They provide a range of policing services which services must be performed within the available resources.

147. I am advised, as shown in the affidavit of Major General Makgato, it is fundamentally flawed to determine the value of an allocation system on the basis of crime alone. One must determine the minimum police resources and juxtapose that with the actual police needs taking into account the crime trends. Clearly a high murder rate will attract higher deployment of police resources but that will not necessarily result in a change in the crime for example of theft.

148. In any event, I am advised as shown in the affidavit of Brigadier Voskuil, there is a marked increase in the deployment of police resources in these targeted stations to deal with crime, including that of murder.

149. Finally, Redpath has used old data which does not support the current position.

The current position is that there is a high deployment of police officers in areas with a high crime rate determined in accordance with the crime analysis and trends. This is done with a commendable level of dynamism taking into account the amoebic nature of crime. In this regard, I am advised that it is important to take into account the affidavit of Brigadier Voskuil which shows how deployments are done and why. It must be emphasised that this is not done on the basis of the Redpath model but in terms of the THRR.

150. I refer to the table that I have included elsewhere in this affidavit in which I identify a range of relevant factors in respect of each of these stations. Properly construed, I do not accept that by assessing murder alone, any conclusions can be drawn about the "*most violent crime*". I also do not understand and no indication is provided as to which years the THRR and Actual ranking is given for. In the circumstances, I am unable to engage with this information on any meaningful basis.

Ad paragraph 80

151. The international guidelines are merely guidelines. The SAPS allocation process is relevant to the circumstances of South Africa. In any event the policy was developed with due regard to the international guidelines. To the extent necessary, I am advised that this issue will be addressed in argument at the hearing of this matter.

152. The differences in the theoretical and actual are vast.

*Ad "Crime Rates"*

Ad paragraph 81

153. I do not understand what is meant in this paragraph. The fact of the matter is that policing involves more than just investigating murder cases. There are two issues that warrant emphasis:

153.1. First, when a murder has taken place, the police must investigate it and determine its causes and if indeed it meets the requirements of murder, to look for the suspect, arrest and charge him or her. That does not necessarily require the deployment of more investigators or detectives. It requires that the investigation be conducted thoroughly and in accordance with the prescripts.

153.2. Second, consideration must be given to the policing required to prevent murders from taking place. Simply put, a core question in this analysis is whether it is possible to prevent murders from taking place solely by employing more police officers to patrol the streets.

154. As far as the investigative capacity of the police is concerned, it is not necessarily true that the more the better. What is true is that the more experienced and competent detectives, the better the chances that murder cases will be resolved properly.

155. The notion that resources are allocated solely based on crime works only with deployments done at provincial levels. This is currently the situation.

Deployments to police stations and policing precincts are done in accordance with crime trends. The areas with the most crime get more police officers allocated to them.

156. However, as I understand is explained in the affidavit of Brigadier Voskuil, there are instances where high deployments have been made but that has not necessarily result in a decrease in violent crimes. Sometimes there is a decrease in violent crime but an increase in contact crime.

Ad paragraph 82

157. It is correct to assume that not all crime is reported. However, when it is reported the SAPS takes action to investigate the reported crime. Again it must be accepted as a reality that not all crime will be reported for a variety of reasons not related to the issue of resources. I do not share Redpath's view that the THRR allocates well performing stations with more resources than those that are not performing well. The THRR calculates the resources needs of the police service and has no regard to whether or not the police station is a high performer or not. It is in the deployment of the allocated resources that the issue of where more resources should be deployed comes into play.

Ad paragraph 83

158. The allegation in this paragraph is noted. It is however denied that poorer areas require more police resources than affluent areas as a matter of course. Sometimes it is the inefficient management of police resources that is a problem rather than the allocation system itself.

*Ad "Poverty"*

Ad paragraph 84

159. It is however not police allocation that will reduce crime generated by poverty and underdevelopment. The allocation of police resources is more complex where there is a high policing environment that is poor and underdeveloped. Poor areas will generally have inadequate policing infrastructure to conduct proper policing. There are limited employment opportunities. Because of these environmental factors, policing in poor areas poses unique and difficult problems that cannot be resolved by only allocating high numbers of police officers.

160. The problems created by poverty must be resolved through effective policing – not necessarily more police officers deployed- but the kind of policing that involves all the relevant stakeholders.

161. Poverty is a crime generator but not a crime management enabler. It complicates policing because it presents variables that have nothing to do with policing. Informal housing and lack of electricity are problems that present difficulties for policing. It is unrealistic to assume that deploying more resources to these areas will improve policing challenges.

162. The THRR does however identify a range of determinants that are weighted in favour of poor areas. While these factors are weighted favourably, they cannot constitute the sole determinants for the allocation of police resources.

61 

Ad paragraphs 85 to 90

163. I do not know the source of this information and am not able to comment on its reliability or veracity. Once more this does not advance a model capable of implementation. It is unclear how the Redpath model would allocate police resources differently to the SAPS. It is a fundamental misconception to rely on poverty in order to determine allocation levels. What stands true is that poverty presents more policing challenges which may not be resolved through a high allocation of police resources. I should however emphasise (as is apparent from pages 27 and 28 of the THRR) that in the THRR a weighted loading is given to factors such as: (a) a lack of street lights; (b) a lack of telecommunications / telephones; (c) a lack of housing and the provision of electricity and security. These criteria are specifically designed to favour poorer areas.

**Ad "Race"**

Ad paragraph 91

164. It is denied that the allocation system is done by racially profiling the communities. Race is not a consideration at all, whether at the level of theory or actual. The THRR does not refer to the race of the communities to which polices services are directed.

165. The racial composition of the identified communities is uncontroversial. But this fact is not created by the allocation system.



166. I do not accept the unsubstantiated allegation that the higher black populations receive fewer police resources. In any event, the SAPS allocation system takes into account population figures (as opposed to racial factors) and crime trends.

Ad paragraphs 92 and 93

167. It is uncontentious that these are largely black African communities. However, I do not accept that the allocation process is responsible for high crime rates or that a higher allocation of police resources will reduce crime. The truth of the matter is that unless the crime generators are dealt with effectively, policing challenges will not necessarily be resolved by a high allocation of police resources, whatever those resources are.

Ad paragraph 94

168. It is denied that the allocation of police resources would address the problems created by the apartheid spatial planning or indeed that it perpetuates spatial apartheid. Apartheid spatial planning has created conditions that require not just improved policing resources, but other non-policing interventions including housing, work opportunities, improved amenities of life.

**Ad “Kwa-Zulu Natal”**

Ad paragraph 95 to 98

169. It is unclear where these figures come from, but it appears that there is no complaint of racial discriminatory allocation system. In light thereof, I am



unable to respond to these paragraphs in any meaningful way. The allocations are done with due regard to a variety of objective factors relevant for policing.

#### **AD “THE ALLOCATION OF RESOURCES”**

##### Ad paragraph 99

170. The allegations in this paragraph are noted.

##### Ad paragraphs 100 to 110

171. The legal submissions made in these paragraphs will more appropriately be addressed in written submissions and at the hearing of this matter. I do not believe that there is a disagreement between the respective spheres of government, the national and provincial sphere of government over policing responsibilities.

172. As regards the allegation that the Regulations are incompatible with the legislation, I am advised that this issue, to the extent relevant, will be addressed in argument. For present purposes, I deny the alleged incompatibility.

##### Ad paragraph 111

173. I accept that the Provincial Commissioner has certain independent powers in terms of section 12(3) of the Police Act.

#### **Ad “The Theoretical Determination”**

Ad paragraphs 112 to 113

174. The allegations in this paragraph are noted. It is particularly insightful that the applicants' concern for police resources does not extend beyond human bodies. By ignoring other aspects of resourcing, on its own, I respectfully aver, a distorted picture is created.

***Ad "The model"***

Ad paragraph 114

175. I have dealt with the THRR above. It is correct that in the first stage of the allocation, there is no account taken of available resources; instead, the interrogation is in respect of how many police men and women will be needed to perform all the tasks that each station is required to perform.

Ad paragraph 115

176. The allegations in this paragraph are admitted, save to clarify that while I was historically responsible for this process of allocation, this is no longer the case.

Ad paragraphs 116 to 117

177. The allegations in this paragraph are admitted. The variables are eminently rational. Any allocation system that does not take into these variables would be irrational and not fit for determining the resource requirements in the SAPS.

178. I do not accept that these paragraphs do justice to the complex, intricate and eminently reasonable framework that the THRR presents. I refer to the explanation provided.

179. As regards the allegation in paragraph 117, I say the following: these factors are relevant to the theoretical allocation but will never be met when the actual allocation is made.

***Ad "The results"***

Ad paragraph 118

180. It is a welcome realisation that the allocation process is a complex exercise requiring careful thought and balancing a number of variables. It is admitted that there is no evidence of racial discrimination in the allocation process.

Ad paragraph 119

181. It is denied that the implementation of the allocation process results in unfair discrimination. The variables taken into account when determining the theoretical requirements cannot result in a uniform allocation of resources. Different areas yield different results on any of the considered variables.

182. The applicants are unable to show why a consideration of neutral and objective factors is racially discriminatory.

183. The allocation system is also not racist in its impact or outcome. It must however be emphasised that the allocation system is implemented within a

racialised environment but is neither motivated by race nor promotes a race-based outcome.

Ad paragraph 120

184. It is not irrational to allocate more resources to areas that have a transient population and high crime rates like Cape Town. It is also not irrational to allocate detectives based on crime trends. Indeed, the applicants seemingly recognise these as being “*entirely reasonable*”.

Ad paragraph 121

185. While the THRR enables the SAPS to give a globular allocation of policing resources based on a number of variables, the deployment of police resources to specific police stations and communities has to be based on crime trends. Since the SAPS does not police people but crime, it is not entirely rational to deploy resources based on that factor. There are instances where it is relevant but the best criteria for determining where more police officers should be deployed is crime trends and weight.

Ad paragraph 122

186. Police resources must be deployed in all areas irrespective of race and class. The rich and white areas require some level of police services even though there are no high crime levels. However, to argue that white rich areas should not have minimum policing services is to act in a discriminatory manner that is prohibited.

187. The evidence tendered at the Khayelitsha Commission is irrelevant to these proceedings. In any event it is incorrect that SAPS members were unable to give explanations for racially patterns of discrimination in the allocation system. The SAPS never accepted that the THRR produced racially discriminatory results in the allocation of police resources. There was no basis on which to tender an explanation in respect of an allegation never conceded to by the SAPS.

Ad paragraph 123

188. SAPS has no objection to providing the data sought in this paragraph.

***Ad "The reasons"***

Ad paragraph 124

189. It is admitted that the THRR is complex. Staffing an organisation like the SAPS is a complex exercise that must be done in a manner that ensures that there is proper accountability for the resources used.

190. It is denied that the allocation process is not available publicly. Anyone is also at liberty to request the document directly from SAPS.

191. On the issue of weighting, the dispute about whether 5% or 2% should be applied demonstrates that this is not an exact science and must be guided by experience. As I have explained, each of the determinants is identified in the THRR and this is constantly being reviewed to meet the dynamics and exigencies of policing.

192. It is incorrect that the system is not checked against experience. The regular and various revisions that the system goes through annually is a telling example of experience being brought to bear in evaluating the efficacy of the system.

Ad paragraph 125

193. I should explain in this regard that SAPS undertakes its work in terms reported crime. It has no way of knowing the extent of unreported crime and cannot therefore reasonably account for it. While I accept that this notwithstanding, the under reporting of crime does present an ongoing challenge, the import of which though, appears to have been inflated by the applicants. In any event, no sensible model may be created without the necessary information; it is unrealistic to expect anyone to determine allocation from "*unreported cases*".

194. Unfortunately, the current capacity is what the SAPS must work with. Speculative capacity is only that but it would not assist the SAPS ensure an equitable allocation of its allocated resources. I do not accept that the analysis based on current capacity represents a flaw.

195. There is no rational principle on which police resources may be allocated on the basis of poverty and race. The Provinces, once they receive their allocations, may prioritise certain areas and target them for more deployment of resources. What is remarkable about the critique of the policy is that no effort is made to provide coherent alternative models that may guide the SAPS in its globular allocation of police resources to police stations so as to meet the needs of effective policing.

Ad paragraph 126

196. The allocation process is designed to ensure that the allocated resources are utilised in order to provide policing services to everyone. It is not correct that the THRR does not take into account the burden of violent crime. The THRR is intended to guide deployment of police resources to police stations. It is a mechanism that is designed to facilitate the effective utilisation of police resources in all policing services for everyone.

197. It is regrettable that applicants have chosen to denounce the allocation system without first understanding it and secondly failing to provide a workable alternative model that meets the needs of effective policing of communities beset by high crime rates.

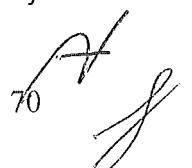
**Ad “The Actual Allocation”**

***Ad “The method”***

Ad paragraphs 127 to 132

198. The summary of the system and its implementation is admitted. There is nothing in the system that is racially discriminatory.

199. The fact of the matter is that the THRR is intended to determine the allocation of resources between provinces and to provide a guide to Provincial Commissioners on how to deploy the resources allocated to them. Where the allocation is inadequate and the Provincial Commissioner is able to convince the National Commissioner, of that fact, the National Commissioner may

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allocate further resources to enable the Provincial Commissioner to make appropriate deployments.

200. The correct legal position is that the utilisation of staff is the prerogative of the Provincial Commissioner. A Provincial Commissioner may shift the people to do specific duties. It is incorrect that funded posts may not be deployed to assist in areas of high crimes.

***Ad "The results"***

Ad paragraphs 133 and 134

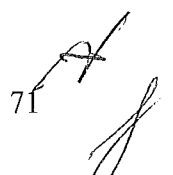
201. The results of the allocation process is an overall allocation of police resources across the country based on objective and rational variables. It is not accepted that the result of the allocation resembles that of the apartheid list. There was no evidence of such a list on which the Khayelitsha Commission should have made that comparison.

202. It is denied that the allocation process should pay attention to the racial make up for purposes of allocation. The fact that the poor black areas generate large volumes of crime is a pointer to more complex issues than simply the allocation of police resources.

***Ad "The Reasons"***

Ad paragraphs 135 and 136

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203. The rationale for the THRR has been sufficiently addressed elsewhere in this affidavit and more pointedly, I am advised, in the affidavit of Major General Makgato.

204. Even if it were accepted that there are disagreements between the Provincial Commissioner and the National Commissioner on the duties involving the allocation of police resources, that does not point to a race based allocation system.

205. The allocation process is based on priorities and not trivialities. The balancing act required in this allocation process often involves population size and crime trends. The people in Constantia need policing services as much as those in Khayelitsha. The provision of policing in one area does not necessarily mean that the other area is deprived because of the colour of their skin or size of their pocket. What the applicant is encouraging is a racially discriminatory allocation of police resources, which cannot be justified at all by the objectives of policing.

#### **AD "UNFAIR DISCRIMINATION"**

##### Ad paragraphs 137 to 140

206. It is denied that the SAPS has failed to act on the recommendations of the Khayelitsha Commission. I am advised that it is also inaccurate that the Khayelitsha Commission gave specific recommendations relating to the variables that should be considered when allocating police resources for poor black people and for rich white people.

207. I am advised that the remaining allegations made in these paragraphs will be addressed in argument at the hearing of this matter.

**Ad "Grounds of discrimination"**

Ad paragraphs 141 to 146

208. The legal analysis engaged in these paragraphs is noted. I am advised that the correctness and cogency thereof will be dealt with in heads of argument.

**Ad "Discrimination"**

Ad paragraphs 147 to 149

209. The legal analysis engaged in these paragraphs is noted. I am advised that the correctness and cogency thereof will be dealt with in heads of argument. For present purposes, I deny the allegations of discrimination, indirect or otherwise.

**Ad "Unfairness"**

Ad paragraphs 150 and 151

210. The applicants have failed to show any discrimination on their papers and the contents of this paragraph is accordingly denied. Contrary to the deponent's assertion, none of the factors are relevant, including the first two.

**Ad "Context"**

Ad paragraphs 152 to 154

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211. It is denied that the SAPS' allocation process entrenches apartheid inequalities.

There is no evidence submitted to support this conclusion. Any inadequacies of the allocation process are not attributable to the alleged racial bias, but due to the significant complexities that such an allocation process presents. Notably, the complexities of the process are conceded (see for example p 47, paragraph 118).

Ad paragraphs 155 and 156

212. The SAPS does not accept that there is discrimination as alleged on account of the allocation process. The discrimination is a systemic one, permeating the entire society and not located in the allocation of police resources.

213. It is denied that the SAPS has refused to implement the recommendations of the Commission. The purpose of the Commission report was to provide a useful basis to improve police governance. On the issue of allocation of police resources, the SAPS noted that the Commission did not have specific recommendations on what aspects of the SAPS' allocation process required improvement. The applicants have similarly lamented the weak aspects of the allocation process, but provided no alternative model on which the court may determine the strength of the claim made by the applicants on the alleged defects of the SAPS' allocation model.

***Ad "Section 14(3)"***

Ad paragraphs 157 to 158

214. The legal submissions made in this paragraph are noted but not accepted. It is denied that the allocation of fewer resources impairs human dignity. I have addressed the alleged racist nature of the allocation process and demonstrated that the applicants are wrong in this primary contention. The social and economic environment in which black people live is what impairs their dignity. It is lack of work opportunities, the presence of poverty, lack of adequate housing and housing opportunities that impacts (directly) on dignity.

215. Crime affects both black and white communities. It is an unfortunate approach to grade the effects of crime in accordance with race. The obligation of the SAPS is not to look after the constitutional rights of black communities and people alone. It is to look after white rich people and communities too. What the applicants are propagating is a racially driven allocation system. That, the SAPS will not do, precisely because section 198 and 199 of the Constitution provides the constitutional framework from which policing must be conducted.

216. The consideration of past discriminatory harm cannot be used to compel the SAPS to dispense their duties in a racially discriminatory manner. The fact of the manner in which there is no legal basis for the submission that crime prevention requires an affirmative action allocation of police resources. This underlying premise, I respectfully submit, is a flawed one.

217. I respectfully aver that these principles are applied in a perverse manner. It is completely inconsistent with the law to submit, as the applicants do that there can be a justifiable basis on which the allocation of police resources should be offered on a racial basis. It is a reckless approach that fails to appreciate the

constitutional value of anti-discrimination laws. The very purpose of the Equality Act is to prevent allocation of police resources from being dispersed on the basis of racial criteria and on very fickle racial assumptions that all white people are rich and therefore deserving of less police resource than blacks who are poor and vulnerable.

218. The application of the test for determining equality is therefore inappropriately applied in this paragraph.

219. The purpose of revising the allocation process without providing an alternative acceptable model is unhelpful. It seeks to invalidate what the applicants do not impugn as directly racially discriminatory measure without offering an alternative model. It shows that the applicants themselves are not in a position to give the SAPS an alternative model for allocating police resources.

### **Ad "Conclusion"**

#### Ad paragraphs 159 and 160

220. It is not the allocation of police resources that has resulted in inferior police services being given to black communities. The inferior services lies in the standard of living that black communities are exposed to, which includes the absence of proper health care facilities, the overcrowding, lack of access to adequate sanitation and lack of general amenities of life that is inferior. There is no support for the contention that the police officers deployed in black communities are inferior to those deployed in white areas. There is no

evidence that murders are investigated better when they happen in white areas than when they happen in black communities.

#### **AD "REMEDY"**

##### Ad paragraphs 161 to 182

221. It is denied that there is a legal basis in terms of the Equality Act that justifies these far-reaching orders sought by the applicants. Relief of the nature sought, I am advised, clearly implicates the separation of powers principle and for that reason alone, does not constitute appropriate relief.

222. The order directing that a policy on the allocation of police resources be submitted for approval by the court is not provided for in the Equality Act. This relief is not only incoherent but incompetent.

223. I am advised that the relief sought in this application will be addressed in argument at the hearing of this matter.

#### **AD "CONCLUSION"**

##### Ad paragraphs 183 to 185

224. The applicants cannot rely on the equality provision and at the same time propagate an allocation system of police resources based on race. It is incoherent to do so. The allocation process is a tool in terms of which the resources of the police are deployed. It is neither unreasonable nor irrational. The applicants have been unable to demonstrate the respects in which it can

held liable for the racialised patterns of society within which the allocation process must be implemented.

225. The applicants have neither shown which aspects of the allocation process are racially discriminatory nor given reasonable remedial alternatives. Because there are no reasonable alternatives, the applicant is left with nothing other than to suggest unhelpful generalities.

226. The applicants are unable to suggest more superior models of allocating police resources and merely seek to place that task on a consultative process in circumstances where it is unclear what it is the applicant propose would remove the discriminatory aspects of the allocation process.

227. It is denied that the SAPS has been recalcitrant. It is the applicants rather whose approach to the police is confrontational and intended to force the police to report to them for their operational decisions and resource allocation.

228. This matter clearly raises contentious disputes of facts which cannot properly be dealt with in motion proceedings. These proceedings were initiated knowing that these disputes existed. The application should accordingly be dismissed, alternatively be referred for trial where the assertions of the witnesses may be tested by subjecting them to cross-examination.

229. At the next directions hearing, and in the event that the applicants persist with proceeding with these motion proceedings, the SAPS will request that the matter be referred for oral evidence should it not be dismissed. The major dispute relates principally to the applicants' view that there are defects in the



SAPS allocation system and policy based on what they have been told by Redpath.

230. It is denied that the system and policy of allocating police resources is influenced by racial considerations. The truth of the matter is that the allocation of resources is directed at existing communities that were organised along the apartheid and racial spatial planning. It is a product of the apartheid spatial planning that black people are largely concentrated in the poorer areas on the outskirts of Cape Town. Police resources are allocated to these areas in accordance with objective criteria that are not racially biased. As the documents appended hereto illustrate, the allocations are done on a racially neutral basis. Other hugely relevant factors, such as crime statistics socio-economic conditions etc. are taken into account and the allocations made have just the opposite effect to what the applicants will have this court believe. I emphasise that while no cognisance is taken of the race of the community in the allocation process, other factors including crime statistics would result in poorer and marginalised communities with a lack of formal housing and basic infrastructure such as roads, water, electricity, toilets etc receiving a higher allocation of police resources. While the size of the population is important, together with crime statistics and the nature of the crimes in any particular police area, it is irrational to base policing solely on population numbers.

231. I can state with confidence that there is therefore no racial criteria in the allocation of police resources. I deny that it is the allocation system that "perpetuate patterns of Apartheid" and "to make the residents of poor Black communities even less safe than they would be with a rational, fair allocation of



police resources". To allege that the allocation system perpetuate apartheid is to mischaracterise the real problem of crime and police resource allocation. To suggest that when allocations for police resources are done, race plays any role is to miss the true practice involving in the allocation process.

## **ANSWER TO THE FOUNDING AFFIDAVIT OF NTUTHUZO NDZAMO**

### **AD "INTRODUCTION"**

#### Ad paragraphs 1 to 6

232. Save to deny that the allocation process is racially discriminatory, inequitable and irrational to poor and black communities or that it results in unfair discrimination as alleged, it is accepted that EE has an interest in the provision of education.

233. I note the remaining content of these paragraphs.

### **AD "THE OBJECTIVES AND WORK OF EQUAL EDUCATION"**

#### Ad paragraphs 7 to 18

234. I note the content of these paragraphs, of which I have no personal knowledge. I do not place EE's standing in dispute.

### **AD "STEPS TO ADDRESS VIOLENCE IN SCHOOLS IN POOR COMMUNITIES"**

#### Ad paragraphs 19 to 28

235. I note the content of these paragraphs, of which I have no personal knowledge.

The rest of the allegations made in these paragraphs demonstrates that the fight against crime is a collective effort and not just that of the SAPS.

#### **AD “THE IMPACT OF DISCRIMINATORY RESOURCE ALLOCATION ON LEARNERS”**

##### Ad paragraph 29

236. The work of policing is complex and cannot be resolved by the SAPS alone. It requires that all stakeholders play a role. It is accepted that the allocation of police resources may impact on how crime is dealt with but it is denied that the allocation of police resources is the only reason why learners are victims of crime. The type of crime likely to impact a learner is not easily policeable. Allocating more police resources does not necessarily reduce crime, until there is a collective community strategy complimenting those deployments.

#### **Ad “The Western Cape social audit in schools”**

##### Ad paragraphs 30 and 31

237. The allegations in these paragraphs are noted.

##### Ad paragraph 32

238. To the extent relevant, the report will be responded to when it is made available. However, the alleged findings of the audit confirm what the SAPS have known all along, that creating safe communities is not the work of the

SAPS alone but various community stakeholders and government departments.

239. It is always difficult to determine what is "*sufficient numbers of police resources*" for purposes of creating safe communities.

240. The presence of policing within school premises is not necessarily a deterrent to crime. An effective deterrent of crime is the attitude of learners to crime and the involvement of the community on matters involving their children's education and safety.

241. In any event, there are numerous police initiated and driven strategies adopted by provinces to address the issues of crime at schools. I specifically refer to the affidavit of Major General Brand, which I am advised, deals with how the SAPS has mobilised different stakeholders to participate in the developing strategies for creating safe communities.

Ad paragraph 33

242. The lapses in policing work are being addressed on a regular basis through regular training of police officers. It is however important to realise that the duty or burden of policing can greatly be assisted by communities and families playing a role in ensuring that crime is reported and that evidence is gathered to ensure successful prosecution. However a more important policing strategy is one that is supported by the communities themselves.

243. I am not in a position to comment specifically on the findings of the social audit, which I have not seen as yet.

Ad paragraph 34

244. The allegations in this paragraph are admitted. However it must be emphasised that communities play an important role in creating a safe environment too. Flooding the streets with police is one way of addressing crime but the police cannot police what happens in homes and inside class rooms.

Ad paragraph 35

245. It is an over-generalisation that has no factual basis to suggest that crime only affects poor, black communities. It is in any event unclear how the deponent has concluded that the disproportionate exposure to crime experienced by those in poor areas is as a consequence of fewer resources being allocated to them. It is important to note that many of the poorer areas have higher crime generators than those in affluent areas.

**Ad “Discriminatory allocation of police resources in Nquthu, KwaZulu-Natal”**

Ad paragraphs 36 to 37

246. It is accepted that ideally police resources must be sufficient to deal with the burden of crime. The reality is that the budget does not permit allocations higher than what is allocated.

247. It is however denied that the mere fact that there are 135 police officers to every 100 000 people in the area demonstrates that the allocation system is irrational and discriminates against black people in the area. The Deponent is unable to suggest what number of police officers would meet the requirements of reasonableness within the available resources.

248. It is not beneficial to the SAPS to allocate policing resources in a racially discriminatory manner. In any event the applicants have not made out a case for racial discrimination.

Ad paragraph 38

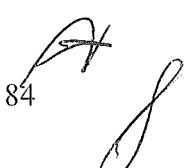
249. The issues raised in this paragraph are important for learners and their rights to education but have nothing to do with police allocations.

Ad paragraphs 39 to 40

250. This too is not a policing matter as much as it is a matter for the provision of education.

Ad paragraphs 40 to 41

251. This issues raised by the applicants demonstrate over and over again that the burden of policing must be borne by relevant stakeholders in government and the communities. Why are adult people targeting learners and why are learners targeting other learners? These are questions that cannot be addressed solely by deploying vast numbers of police.



252. In any event, the facts do not support the allegation that the allocation of police resources is racially discriminatory.

Ad paragraph 42

253. The incident referred to in this paragraph is deeply troubling, but does not support the allegation of a racially discriminatory allocation process or system. There is no guarantee or assurance that the incident would not have happened if there had been a higher deployment of police resources in the area.

Ad paragraph 43

254. It is denied that the allocation system is racially discriminatory in any manner. I have explained above how the allocation takes place. It may well be that something must be done with the deployment strategies adopted locally but has nothing to do with the allocation of police resources.

**AD “PERSONAL EXPERIENCES AND THE IMPACT OF THE RESOURCING POLICY ON EQUAL EDUCATION”**

Ad paragraphs 44 to 46

255. The personal experience of the deponent is regrettable and I am sure is the experience of many learners in deprived communities. However, I must emphasise that the experience is irrelevant to the question – how many police officers should be allocated to the Province and how many should be deployed to the specific police stations.

Ad paragraph 47

256. During the Khayelitsha Commission, these were common experiences of many people who testified. The important issue to always bear in mind is that the SAPS will not prevent all crime from happening. It will prevent some crime. What will make a big difference in creating safe communities is the involvement of community's stakeholders.

257. The experience was neither as a consequence of the allocation system nor could it have been prevented by that allocation process.

Ad paragraph 48

258. The experience of crime set out in this paragraph is regretted but it is denied that this was as a result of the allocation system that is discriminatory. The deployment of available police resources in a particular area may prevent these crimes from happening but it is not a guarantee that these crimes will not take place at all.

Ad paragraphs 49 to 50

259. The evidence of crime trends is important in the deployment of resources and this is done at a provincial or station level. I deny that there is a racial motivation for the allocation done by the National Commissioner or the deployment of police resources by the Provincial Commissioner or the police stations.

**AD "SUPPLEMENTARY LEGAL GROUNDS"**



Ad paragraphs 51 to 52

260. I am advised that these supplementary legal grounds do not make out a case for the relief sought. They are important in showing that crime violates a number of constitutional rights but do not support the primary allegation which is that the allocation of police resources is done on the basis of race. They also do not support the contention that there is a racially offensive objective in the deployment of police resources to particular police stations which is done at a provincial level.

**Ad “The Equality Act”**

Ad paragraph 53

261. I have explained the rationale for the allocation system and stated that the SAPS stance on it is that it is open to changes and revisions. It is denied that the allocation system is discriminatory in a racial sense or based on social or economic factors. The allocation system is based on a number of relevant variables that are relevant to the business of policing.

Ad paragraph 54

262. There is no evidence that the safety allegedly experienced in so-called white schools is a result of police allocations or deployments. I deny the contentions and allegations made in this paragraph.

Ad paragraph 55



263. The current allocation process meets the obligations set out in the Constitution to make policing services available on a non-discriminatory basis. The applicants are invited to make specific proposals to the allocation system that will achieve what it contends for in this and other paragraphs in the affidavits under reply.

Ad paragraph 56

264. The allocation system is designed to ensure that the SAPS is able to fulfil its constitutional obligations. It meets those obligations within the allocated budget.

Ad paragraph 57

265. It is denied that there is any evidence that the allocation system is either racially discriminatory as alleged or that its implementation is racially discriminatory.

**Ad “Children’s Rights”**

Ad paragraphs 59 to 61

266. The legal submissions made in this paragraph are denied in so far as they purport to support the relief sought in the application. They do not support the allegation that the allocation system is racially discriminatory. I am advised that they will be addressed in argument.

**Ad “Right to Education”**

267. I deny the allegation of discrimination and am advised that the submissions made herein will be addressed in argument.

**Ad “African Charter on the Rights and Welfare of the Child”**

Ad paragraphs 62 to 65

268. The submissions made in this paragraph are denied in so far as they purport to support the relief sought in this application. They do not support the allegation that the allocation system is racially discriminatory. I am advised that this will be addressed in argument.

**Ad “UN Convention on the Rights of the Child”**

Ad paragraphs 66 to 70

269. The submissions made in this paragraph are denied. They do not support the allegation that the allocation system of the SAPS is racially discriminatory.

**AD “CONCLUSION”**

Ad paragraph 71

270. The allegations in this paragraph are denied. There is simply no evidence of such discrimination.

271. In the circumstances, this application falls to be dismissed with costs, including the costs attendant upon the employment of three counsel, alternatively that it

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be referred to oral evidence on the allocation process and other factual disputes between the parties which cannot be resolved on the papers.



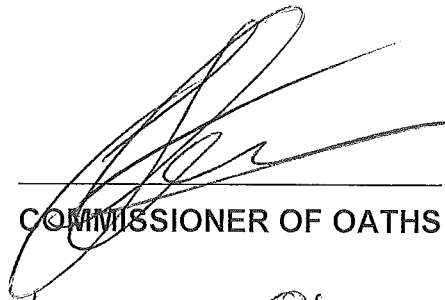
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LEON RABIE

I hereby certify that on the 17<sup>th</sup> day of FEBRUARY 2017 in my presence at CAPE TOWN the Deponent signed this Affidavit and declared that he: -

- (a) knew and understood the contents hereof;
- (b) had no objection to taking this oath;
- (c) considered this oath to be binding on his conscience and uttered the words:-

"I swear that the contents of this Affidavit are true, so help me God."



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COMMISSIONER OF OATHS

Lourens O'Connor  
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2nd Floor, 42 Keerom Street  
Cape Town.