

IN THE EQUALITY COURT
(HIGH COURT, CAPE TOWN)

Case number:

In the matter between:

SOCIAL JUSTICE COALITION

First Applicant

EQUAL EDUCATION

Second Applicant

and

MINISTER OF POLICE

First Respondent

NATIONAL COMMISSIONER OF POLICE

Second Respondent

WESTERN CAPE POLICE COMMISSIONER

Third Respondent

MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE

Fourth Respondent

FOUNDING AFFIDAVIT

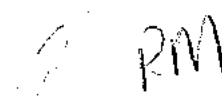
I, the undersigned

PHUMEZA MLUNGWANA

do hereby make oath and state as follows:

I **INTRODUCTION**

1. I am an adult female residing at L691 Gwabeni Crescent, Site B, in Khayelitsha. I am the General Secretary of the First Applicant, the Social Justice Coalition (**SJC**). I am duly authorised to depose to this affidavit, in accordance with the attached resolution marked **PM1A**.

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2. The facts contained herein are true and correct and are within my personal knowledge unless the context indicates otherwise. Where I rely on information conveyed to me by my legal counsel and others, as appears from the context, I believe the same to be true and correct.
3. This is an application in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (**Equality Act**) to compel the South African Police Service (**SAPS**) to remedy the manner in which it allocates police officers to police stations. The current arrangement is both irrational and discriminatory. It provides more police officers to stations servicing rich, white populations with low contact crime rates, and fewer police officers to stations serving poor, Black (including both African and Coloured) communities with high contact crime rates. The result is that residents of these Black communities are less safe, more at risk of crime, and their constitutional rights are more likely to be violated.
4. It is startling that this situation – which is a relic of apartheid persists today. In 2014, the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha (**the Khayelitsha Commission**) explained that *“[o]ne of the questions that has most troubled the Commission is how a system of human resource allocation that appears to be systematically biased against poor black communities could have survived twenty years into our post-apartheid democracy.”* (394) Before the Khayelitsha Commission, the then Western Cape Provincial Commissioner conceded that the current system for allocating human resources was *“irrational”*.
5. The Khayelitsha Commission issued a clear recommendation that SAPS revise its theoretical system for determining the allocation of human resources as a matter of urgency. Despite repeated requests from the SJC for the First Respondent (**the Minister**) and the Second Respondent (**the National Commissioner**) to act on the Commission’s recommendation, no action has been taken.
6. As a result, the following finding of the Commission remains depressingly accurate:

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"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 needs to change as a matter of urgency." (449)

7. The Applicants have since confirmed that a similar pattern applies in KwaZulu-Natal, where peri-urban Black communities with high crime rates are substantially under-resourced compared to other communities. Given that the same underlying causes of this disparity are present in the other seven provinces, it is likely that they too perpetuate the inequities of Apartheid.
8. There are two stages to the allocation of resources within SAPS:
 - 8.1. The theoretical determination of how many police officers would be required at each station if there were unlimited human resources; and
 - 8.2. The actual allocation, or distribution of the limited number of police officers that are available.
9. At both the theoretical and the actual stages, the results unfairly discriminate against poor, Black communities, in favour of rich, white communities.
10. This application seeks to remedy this pattern of unfair discrimination. It seeks to compel the Minister and the National Commissioner to take urgent steps to:
 - 10.1. Revise its theoretical system of allocating human resources through an open, consultative process in order to ensure outcomes that are rational and non-discriminatory;
 - 10.2. Make the theoretical and actual allocation of police human resources publicly available;
 - 10.3. Remedy, as a matter of urgency, the discriminatory allocation of resources within the Western Cape; and
 - 10.4. Declare that Provincial Commissioners have the power and the obligation to deviate from the theoretical human resource allocation in order to provide a fair and equitable distribution of police officers.

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11. In addition, the Applicants seeks an order maintaining this court's supervision of the process of revising the theoretical system, and the actual allocation in the Western Cape, in order to ensure that the Minister and the National Commissioner of Police comply with their constitutional and statutory obligations. This is necessary given the Minister and the National Commissioner's inexplicable and ongoing refusal to act on the Khayelitsha Commission's recommendations.
12. The remainder of this affidavit is structured as follows:
 - 12.1. **Part II** describes the parties;
 - 12.2. **Part III** sets out the factual background to this application in three sections:
 - 12.2.1. The campaign for safe communities;
 - 12.2.2. The process and findings of the Khayelitsha Commission; and
 - 12.2.3. SJC's attempts to attain compliance with the Commission's recommendations.
 - 12.3. **Part IV** describes the how the allocation of police resources in the Western Cape and KZN perversely maps onto divides of race, poverty and crime;
 - 12.4. **Part V** explains why the both the theoretical and the actual allocation of policemen and women constitutes unfair discrimination on the basis of race and poverty; and
 - 12.5. **Part VI** addresses the just and equitable remedy.
13. This affidavit will be accompanied by the expert affidavit of **JEAN REDPATH**, to which I will refer throughout, and particularly in **Part IV**.

II PARTIES

The Applicants

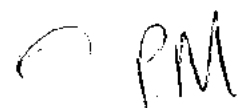
14. The first applicant is the SJC which was founded on 16 June 2008 as a consequence of the xenophobic violence in May 2008 that left many immigrants, asylum seekers, refugees and other people dead, injured or displaced.

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15. The SJC is a democratic, public benefit and membership-based social movement. The majority of its members are working-class and poor individuals, most of whom live in the informal settlements of Khayelitsha in Cape Town. The SJC has more than 2,000 members in 12 branches in Khayelitsha including RR1 Section, RR Nyanga, BM Section, BT Section, CT Section, SST, PJS, Nkanini, Green Point, Makhaza, Monwabisi Park and Zwezwe.
16. The SJC is registered as a non-profit organisation with the Department of Social Development with the registration number 067-689-NPO. In accordance with its Constitution, the SJC is authorised to initiate litigation to promote its objectives which include the following:
 - 16.1. To organise people of all backgrounds to address crime, corruption, poor service delivery, unemployment, homelessness, ill-health, hate crimes, and unequal and poor education;
 - 16.2. To promote awareness of rights and the utilization of these rights to hold government accountable;
 - 16.3. To build a grassroots movement which campaigns non-violently for government to design and implement policies that redress the imbalances of the past and reduce inequality and poverty;
 - 16.4. To build a movement of individuals united across the divisions of race, gender, class and nationality dedicated to building active citizenship;
 - 16.5. To uphold the rights in our Constitution that the Constitutional Court and the judiciary have upheld since the advent of democracy in 1994;
 - 16.6. To use community organizing, petitions, protest, education, litigation, partnership, media, parliament and the courts to advance the agenda of the SJC;
 - 16.7. To campaign for improved access to basic services for everyone, particularly those living in poor and working class communities; and

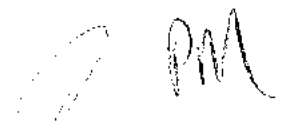
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- 16.8. To advocate for the delivery of services and infrastructure through meaningful engagement and cooperation between affected communities and government.
17. The SJC was one of a coalition of organisations that lodged complaints with the Premier of the Western Cape that led to the establishment of the Khayelitsha Commission. The other organisations were the Treatment Action Campaign, Equal Education (**EE**), the Triangle Project, Ndifuna Ukwazi (**NU**) and Free Gender. The SJC participated actively in the Commission, by, amongst other things, leading community and expert witnesses.
18. The Second Applicant is EE. A confirmatory affidavit of Ntuthuzo Ndzomo, the Deputy General Secretary of Equal Education, will be filed together with this application. EE is a membership-based social movement of learners, parents, teachers and community members working for quality and equality in South African education, through analysis and activism. It is a non-profit organisation, duly registered in terms of the Nonprofit Organisations Act 71 of 1997, with registration number 068-288-NPO.
19. The core of EE's membership base are high school learners, known as 'Equalisers', who passionately advocate for quality education for all. EE has approximately 3220 Equaliser members across KwaZulu-Natal, Eastern Cape, Western Cape, Limpopo and Gauteng, who are active on a weekly basis. EE also has a parent following, with six EE parent branches located in the Western Cape. In addition EE has many more active supporters.
20. EE's core objective is to campaign to achieve equal and quality education for all. In terms of clause 5 of its Constitution, EE may conduct a broad range of activities to achieve this objective, including but not limited to:
- 20.1. Building a generation of young people and leaders who are socially and politically aware, committed to human rights and global environmental



sustainability, personally responsible, active in struggles for freedom and equality, and who live by EE's values.


- 20.2. Developing the capacity of learners, parents, teachers, students, post-school youth and community members to drive improvement in schools and educational institutions.
 - 20.3. Conducting and apply research on the state of the education system in South Africa.
 - 20.4. Engaging constructively with the State on best practices in the management and governance of the education system including through meetings, letters or briefs and input into legislative and policy development processes.
 - 20.5. Providing information about education and human rights to the public.
 - 20.6. Where necessary, using courts and legal processes to advance the values and objectives listed in its Constitution.
 - 20.7. Contributing to a strong civil society that holds private interests, government, individuals, and itself accountable to the values in its Constitution.
 - 20.8. Promoting and, where necessary, defending basic democratic principles and rights, such as freedom of expression and association, access to information, privacy, good governance, participation in democratic elections, and freedom and security of the person, including freedom from sexual harassment and gender-based violence.
21. As one of the initial complainants to the Premier, EE has a manifest interest in this application. Its interest is particularly related to the impact of the irrational and discriminatory distribution of police officers on learners. EE has conducted studies that show that learners in areas with lower police:population ratios feel less safe when they walk to or from school. This affects not only their rights to freedom and security of the person (s 12 of the Constitution), but also their right to a basic education (s 29(1)(a)). EE will file a supporting affidavit addressing these issues at a date to be determined at the directions hearing to be held in terms of regulation 6.

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22. Both SJC and EE act in three capacities:
- 22.1. They act in their own interest as organisations committed to equality and improving the lives of the most vulnerable in society;
 - 22.2. They act on behalf of their members, many of whom live in Khayelitsha and other similar areas that bear the brunt of the discriminatory distribution of police resources; and
 - 22.3. They act in the public interest – it is not in the public interest for police resources to be distributed in a way that perpetuates rather than remediates the effects of Apartheid.

The Respondents

23. The First Respondent is the **MINISTER OF POLICE** served care of the State Attorney, 22 Long Street, Cape Town. The Minister is cited in his official capacity insofar as he is the person responsible for policing in South Africa in terms of section 205 and 206 of the Constitution of the Republic of South Africa as well as the South African Police Service Act 68 of 1995 (**SAPS Act**).
24. The Second Respondent is the **NATIONAL COMMISSIONER OF POLICE** served care of the State Attorney, 22 Long Street, Cape Town. The National Commissioner is cited in his official capacity insofar as he is the person responsible for controlling and managing police service in terms of a 207 of the Constitution and s 6(1) and 11 of the South African Police Service Act 68 of 1995.
25. The Third Respondent is the **PROVINCIAL COMMISSIONER: WESTERN CAPE (Provincial Commissioner)** served at 25 Alfred Street, Cape Town. The Provincial Commissioner is cited in his official capacity in so far as he is the person responsible for policing in the Western Cape in terms of s 207(4) of the Constitution and s 6(2) and 12 of the SAPS Act.
26. The Fourth Respondent is the **MINISTER FOR COMMUNITY SAFETY: WESTERN CAPE (Provincial Minister)**. The Provincial Minister is served at 5th Floor, 35 Wale

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Street,. No relief is sought against the Provincial Minister. He is cited because of his role of providing oversight of SAPS in terms of s 206 of the Constitution.

III FACTUAL BACKGROUND

27. In this Part, I explain the relevant factual background to this application. In particular, I:
- 27.1. Explain the SJC's Safety and Justice Campaign that preceded the complaints that led to the establishment of the Khayelitsha Commission;
 - 27.2. Discuss the Khayelitsha Commission and its findings regarding the allocation of resources; and
 - 27.3. Set out the efforts the SJC has made to get the Minister and the National Commissioner to implement the Khayelitsha Commission's recommendations.


Safety and Justice Campaign

28. The SJC instituted the Safety and Justice Campaign in order to improve the safety of residents of Khayelitsha. The campaign was informed by the SJC's understanding of the impact of crime, and particularly violent crime.
29. While violent crime is prevalent throughout South Africa, the burden of crime is not borne equally by everyone in South Africa. The ten police precincts with the most murders in 2013/14 were Nyanga (305); Inanda (164); Harare (164); Mitchell's Plain (158); Gugulethu (150); Khayelitsha (146); Delft (144); Mthatha (139); Umlazi (133); and Kwa Mashu (128). Those ten precincts account for almost ten percent of total murders. All ten precincts are located in poor and working class Black areas.
30. In Cape Town, where the SJC is based, 5 of 61 SAPS precincts account for 42% of the City's 2013/14 murders: Nyanga (13.8%); Harare (7.4%); Mitchell's Plain

- (7.13%); Gugulethu (6.77%); and Khayelitsha (6.59%). Again, these are all poor and working class, largely Black, townships, located far from economic opportunities within the city centre. I return to the unequal burden of violent crime and its perverse relationship with policing resources in **Part IV**.
31. Murder, as Jean Redpath confirms, is often used a proxy to measure the prevalence of serious violent crimes, as the number of murders tends to track these crimes. These areas – and others like them – are not only the ones where the most murders occur, they are also where the most rapes, armed robberies, and serious assaults occur.
 32. SAPS has an obligation to protect the rights of all people, particularly the vulnerable. The safety of communities should be measured, as stated in Chapter 12 of the National Development Plan, by "*the extent to which the most vulnerable in society, women in particular, feel and are safe from crime and the conditions that breed it*." The Safety and Justice Campaign was built to ensure that people feel safe and are safe.
 33. The police cannot be held solely responsible for the conditions that cause violent crime, or the victimisation of vulnerable people. However, the police have a duty to provide visible policing that deters crime, and detectives that ensure sensitive and effective investigations, that lead to the perpetrators being brought to trial. The police have a duty to act to make the members of the community safe.
 34. The 2014/15 Victims of Crime Survey (VOCS), published by Statistics South Africa reports that 85.4% of survey respondents felt safe in their areas during the day. Most respondents (68.9%) felt unsafe in their areas at night. The VOCS also found that 36.9% of respondents were prevented from going to public spaces or parks due to crime in their area, while 18,4% of households could not allow their children to walk to school unaccompanied by an adult. According to the VOCS, only 46% of respondents in the Western Cape felt safe in their area during the day. I attach a copy of the VOCS as annexure **PM1**.



35. A February 2012 survey by Mthenthe Research and Consulting Services, attached marked **PM2**, paints a worse picture for people living in Khayelitsha:
- 35.1. Between 68% and 77% of respondents did not feel safe in their own suburb (depending which of the three police stations' precincts they lived in);
 - 35.2. 71% of people did not feel safe in public spaces during the day;
 - 35.3. 68% of people did not feel safe in the street during the day;
 - 35.4. 67% of people did not feel safe accessing communal services during the day;
 - 35.5. 62% of people did not feel safe at home during the day
 - 35.6. 64% of people did not feel safe on public transport during the day; and
 - 35.7. 76% of people did not feel safe in their home at night.
36. The Mthenthe survey was limited to Khayelitsha. But it is typical of the experience of people living in poor and working class Black communities. It demonstrates how the experience of crime and safety differs greatly when comparing Khayelitsha, which has high crime and a less than average allocation of police officials, and the average perception of safety nationwide. Serious and violent crime severely impacts the lives of many people in our country, but none are as affected as residents of informal settlements and townships. Khayelitsha, where the majority of the SJC's members live, is one such township.
37. The Safety and Justice Campaign was established to support the campaign for improved justice initiated by the Treatment Action Campaign (TAC) in 2003. As I was not involved in the Safety and Justice Campaign at this early stage, a confirmatory affidavit of **ABDURRAZACK ACHMAT** who was closely involved in the TAC at the time.
38. This campaign was precipitated by the violent murders of activists Lorna Mlofana in 2003, Nandipha Makeke in 2005 and Zoliswa Nkonyana in 2006. Nandipha Makeke was only 18 at the time of her death and had been an activist with TAC since she was 14. At every court hearing, TAC members observed inside the court room and picketed outside to raise awareness and to call on the police and the National

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Prosecuting Authority to properly investigate and prosecute the case. Over the course of the trial, which lasted more than two years, TAC noted that the case was marked by police indifference and unnecessary postponements. The police also failed to take seriously the intimidation and harassment (including death threats) of witnesses.

39. On 15 November 2007, TAC issued a press statement noting the following:

"If this is how long it has taken to get justice for Nandipha's family and friends, this raises the question: How much longer does it take for justice to be done in the vast majority of cases where there is no community mobilisation? Nandipha's death has left a hole in the community in Harare and particularly her family. The four perpetrators have brought endless pain to Nandipha's family and friends but endless delays are also unfair on them as awaiting trial prisoners."

40. The full statement of the TAC press release is attached marked **PM3**.
41. The TAC's campaign gained further momentum when the SJC joined it in June 2008. Together with its partner organisations (Ndifuna Ukwazi, EE, Free Gender, Triangle Project and the Treatment Action Campaign) the SJC organised more than one hundred demonstrations, pickets, marches and other forms of protest against the continued failures of the Khayelitsha police and greater criminal justice system. The organisations also submitted numerous petitions and memoranda to a variety of government structures.
42. In November 2011, the SJC, EE and their partner organisations lodged a formal complaint with the Premier of the Western Cape calling for a Commission of Inquiry in terms of s 206(3) of the Constitution. On 5 June 2012, we supplemented that complaint with additional information. I attach a copy of the original and supplementary complaints to the Premier marked **PM4** and **PM5**.
43. In August 2012, the Premier of the Western Cape, in response to the complaint, appointed a commission of inquiry to investigate allegations of police inefficiency and

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a breakdown of relations between the community and the police in Khayelitsha. The Khayelitsha Commission was presided over by former Constitutional Court Justice Kate O'Regan and former National Director of Public Prosecutions Vusi Pikoli.

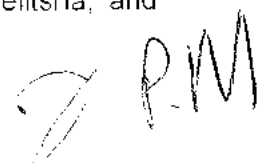
44. Before the Khayelitsha Commission could begin its work, the Minister and the National Commissioner challenged the legality of the decision to establish it, and the powers of subpoena if had been afforded. The SJC defended the establishment of the Commission. On 1 October 2013, after delaying the Commission's work for almost a year, the legal challenge was ultimately rejected by the Constitutional Court in *Minister of Police and Others v Premier of the Western Cape and Others* [2013] ZACC 33; 2014 (1) SA 1 (CC).

The Khayelitsha Commission

45. The work of the Khayelitsha Commission is fully recorded in its report, a copy of which will be provided to this court together with this application. In this section, I discuss the process of the Commission, its findings, and its recommendations.

Process

46. During the period of January to May 2014, the Commission sat for 37 days of formal, public hearings. It heard the testimony of dozens of witnesses comprising:
- 46.1. Members of the community (including myself) who had been affected by crime;
 - 46.2. More than 25 experts in various aspects of policing (including Jean Redpath); and
 - 46.3. Members of SAPS, including the Station Commanders of all three Khayelitsha stations, the Cluster Commander, the Provincial Commissioner, and Brigadier Rabie, the person responsible for the allocation of police resources.
47. The Commission also received affidavits from hundreds of residents of Khayelitsha expressing their concerns about the lack of effective policing in Khayelitsha, and

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especially within the informal settlements. Many of these affidavits testified to the burden of crime felt by people living within a largely poor urban community where many people fall victim to violent crime while performing daily activities such as collecting water or using the toilet.

Findings

48. After having heard all the evidence and argument from the parties, the Commission concluded that there were indeed inefficiencies in policing in Khayelitsha. These inefficiencies included:
- 48.1. The lack of guidelines for patrols of informal neighbourhoods and the fact that, *"by and large these do not seem to take place in Khayelitsha"*;
 - 48.2. A detective service that is *"close to a crisis point"* that is often unable to investigate reported crimes *"properly or at all"*, resulting in cases being struck from the court roll;
 - 48.3. A system of crime intelligence that *"is not functioning according to SAPS national guidelines"*;
 - 48.4. Crime scene management was *"often not in accordance with the prescribed protocol"*;
 - 48.5. Ineffective management;
 - 48.6. The lack of strategies to address youth gangs and vigilante killings; and
 - 48.7. The failure to comply with the Domestic Violence Act.
49. The Commission also concluded that there was a breakdown of relationships between the police and the community. Some of the key reasons for this conclusion were:
- 49.1. *"widespread perceptions that SAPS does not respond promptly to calls for assistance and does not investigate crime properly or at all"*;
 - 49.2. The failure to deal with complaints against policemen;
 - 49.3. Perceptions that policemen in Khayelitsha are corrupt; and

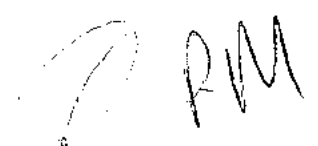
- 49.4. SAPS' failure to treat members of the public with respect and to assess community perception and attitudes in SAPS' performance measurement tools.
50. The Commission also made specific findings regarding both the distribution of police resources, and the adequacy of the resources devoted to Khayelitsha.
51. First, based largely on the testimony of Redpath, the Commission concluded that the allocation of human resources was irrational. It noted that the fifteen police stations in the Western Cape *"with the lowest police population ratios are all socially disadvantaged and many of them have high levels of violent crime."* (392) Or, as it put the problem later:
- "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, Kleinvllei, Delft, Lwandle, [Harare and Khayelitsha Site B]".* (449)
52. These are *"the poorest areas of Cape Town that bore the brunt of apartheid"* (449).
53. Neither Brigadier Rabie (who was responsible for the determination of human resource needs) nor any other SAPS member could *"provide any reason to explain the low levels of police to population in Harare and Khayelitsha Site B."* (392) Indeed, the (then) Provincial Commissioner, Lieutenant General Lamoer, agreed that the human resources allocation was "irrational". (392)
54. It concluded as follows:

"The Commission also concludes that the system for the allocation of human resources within SAPS, the THRR, while a sophisticated system that appears to have been developed in good faith, appears to produce an in-built bias against poor areas in the Western Cape, such as Khayelitsha Site B and Harare. ...

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One of the questions that has most troubled the Commission is how a system of human resource allocation that appears to be systematically biased against poor black communities could have survived twenty years into our post-apartheid democracy. In the view of the Commission, the survival of this system is evidence of a failure of governance and oversight of SAPS in every sphere of government." (392-3)

55. I return to the reasons why the system of allocation produces these effects in **Part V** below.
56. Second, the unequal distribution of resources led to insufficient human resources being assigned to the Khayelitsha police stations. The Commission pointed out that "[a]ll the station commanders told the Commission that they had too few SAPS members at their police stations" and that they had "insufficient personnel to provide an efficient and effective service in Khayelitsha." (391)
57. Vitally, it concluded that "*the structural under-staffing of the Khayelitsha police stations which resulted from the application of the biased THRR, is one of the reasons for many of the inefficiencies*" it identified (392-4). More particularly, it found that the lack of staff was a major cause of the inefficiencies in the detective service and the visible policing service:
- 57.1. Detectives: The evidence before the Commission showed that detectives at the three Khayelitsha stations carried an average of between 145 and 160 dockets (Site B), 133 dockets (Harare), and 131 dockets (Lingeletu West). Yet Mr Swart, a former detective and Family Violence, Child Protection and Sexual Offences Unit commander, testified "*that more than 50 dockets was not manageable.*" Brigadier Dladla, the Station Commander of Site B, said that "*in Khayelitsha, instead of a team of detectives descending on a murder as happens in the movies, 'you have a team of dockets descending on a detective'.*" Colonel Marais, the detective commander at Site B, stated frankly that "*the reality is there is not enough hours in a day, there is not enough*

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days in a week, there is not enough investigators". Given the intense shortage of detectives in Khayelitsha, it was no surprise that the Commission found that "the number of detectives allocated to the three Khayelitsha police stations in terms of the RAG is insufficient, given the heavy burden of dockets in the three police stations" (at 365-6).

57.2. Visible policing: The Commission found that *"the failure to patrol informal neighbourhoods on a regular basis results, in part, from the lack of personnel at the police station" (358).*

58. Of course, more policemen alone is not enough to ensure effective and efficient policing. There were many other problems that contributed to the inefficiencies the Commission identified. But as the Commission explained, *"[a]ppropriate staffing levels may be a necessary condition for effective and efficient policing, but they are not a sufficient condition for it."* (394)

Recommendations

59. The Commission made the following recommendations concerning the allocation of human resources:

59.1. *"[T]he 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."* (450)

59.2. The new mechanism to be adopted by SAPS should *"be subject to oversight by the key oversight agencies, notably the Civilian Secretariat and, in relation to provincial resource allocations, the provincial governments."* (450) The allocation system should also be disclosed in the SAPS annual report to Parliament as well as to provincial legislatures.


59.3. If the system produced *"any significant departure from an allocation based on population figures and reported crimes rates[, it] should be explained."* (450)

59.4. Given that a significant re-allocation of resources may be necessary, the Commission recommended that *"it should be phased in over a period of time that should not exceed three years."* (450)

59.5. *"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".* (450)

Engagement with the Respondents following the Khayelitsha Commission

60. Following the Khayelitsha Commission the Applicants campaigned consistently for the implementation of the Commission's recommendations through marches, protests, seminars, workshops and direct engagement with the police and policy makers at a local, provincial and national level.
61. Taking into account the experience of its members in Khayelitsha in relation to policing and safety, the Safety and Justice Campaign has placed a special focus on advocating for the urgent implementation of the following recommendations:
- 61.1. The urgent and equitable allocation of policing resources, in order to ensure that the poorest areas with the highest levels of crime have sufficient numbers of competent and experienced police personnel, who can properly prevent and investigate crime;
- 61.2. The urgent development of guidelines for visible policing in informal settlements; and
- 61.3. The development of a plan by the South African Police Service (SAPS) at a national level to address vigilantism.
62. The Safety and Justice Campaign has attempted to work constructively with SAPS through the SAPS Khayelitsha Cluster Joint Forum. The Joint Forum was established by the Khayelitsha Cluster Commander in 2014 to bring together all stakeholders to develop and implement safety interventions within Khayelitsha. The

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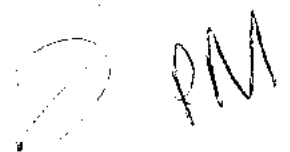
SJC mobilised its members and other stakeholders to participate in the Joint Forum. SJC members continue to attend the forum meetings assiduously.

63. The Joint Forum should meet every two months. However, the first meeting for 2016 has been postponed twice. The last meeting occurred in November 2015. There are also sub-forums that are meant to meet monthly. However, this year they have been dysfunctional. Despite the good intentions of the Joint Forum, it has not been effectively implemented.
64. Despite attempts to work constructively with SAPS and engage with both its provincial and national leadership, the SJC has yet to receive any substantive response to its demand for effective policing for poor Black communities within South Africa.
65. Since the Khayelitsha Commission released its findings on 25 August 2014, the Applicant and its partner organisations has attempted to engage with the Minister and the National Commissioner numerous times through letters, emails, telephone conversations and meetings. The following is a chronology of the most important interactions:
- 65.1. On 26 September 2014, one month after the Khayelitsha Commission released its final report, the SJC, EE and Ndifuna Ukwazi (NU) sent a letter to the Minister via his Private Secretary, Amelia Monaheng, requesting a meeting with the Minister. This letter is attached marked **PM6**.
- 65.2. On 15 January 2015, a second letter was sent to the Minister following up on the previous request for a meeting. This letter is attached marked **PM7**.
- 65.3. On 22 January 2015, an email was sent to the Minister's Private Secretary following up on an earlier telephone conversation and proposing three dates for a meeting between with the Minister. The email is attached marked **PM8**.
- 65.4. On 22 January 2015, the Minister's Private Secretary sent an email stating that she would respond to the request for a meeting by the first week of February. This email is attached marked **PM9**.

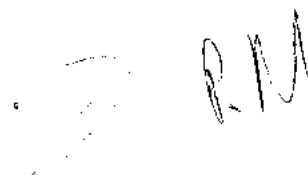
- 65.5. On 3 February 2015, Craig Oosthuizen from NU sent an email to the Minister's Private Secretary following up on previous requests for a meeting with the respondent and proposing new meeting dates. This email is attached marked **PM10**.
- 65.6. On 12 February 2015, Mr Oosthuizen sent another email to the Minister's Private Secretary following up on an earlier telephone conversation and requesting clarity on whether the Minister would be available for a meeting over the course of the next month. This email is attached marked **PM11**.
- 65.7. On 19 February 2015, Zackie Achmat, the Director of NU and Secretariat member of the SJC, sent an email to the Minister's Private Secretary indicating the intention of the SJC, EE and NU to build a "solid partnership" with the Ministry of Police and requesting her assistance in arranging a meeting with the Minister. This email is attached marked **PM12**.
- 65.8. On 26 February 2015, Mr Oosthuizen sent another email to the Head of Stakeholder Relations in the Ministry of Police, Molate Moremi. The email followed up on an earlier telephone conversation between Mr Oosthuizen and Mr Moremi and requested a date for a meeting between the SJC, EE and NU with Mr Moremi. This email is attached marked **PM13**.
- 65.9. On 25 March 2015, a meeting was held at the Ministry of Police office in the Parliament complex in Cape Town. Mr Vincent Simelane and Mr Molate Moremi from the Ministry of Police met with Mr Chumile Sali, Mr Achmat, Mr Oosthuizen and me, as representatives of the SJC and NU.
- 65.10. On 31 March 2015, I sent a letter to Mr Moremi thanking him for the meeting and summarising the outcomes agreed between all parties at the meeting. This letter is attached marked **PM14**. As reflected in the letter, the agreed outcomes from the meeting were as follows:
- 65.10.1. The Minister of Police would provide an official response to the Khayelitsha Commission of Inquiry's report;

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- 65.10.2. The Ministry needs to present a plan to address the Commission's recommendations;
- 65.10.3. It was necessary to find a way to bring together all role players involved in creating and maintaining safety – this could possibly be done through the community safety forums;
- 65.10.4. There needs to be mutual support between civil society and the police; and
- 65.10.5. There must be constant monitoring and evaluation to ensure that the plan presented by the Minister is implemented.
- 65.11. On 31 March 2015, Mr Molate Moremi acknowledged receipt of the aforementioned letter and stated that he would revert back as soon as he could regarding the discussions that were held between the SJC, NU and himself. This acknowledgment of receipt is attached marked **PM15**. Unfortunately, no substantive response was received by the SJC or NU after we received the acknowledgment of receipt.
- 65.12. On 8 June 2015, the SJC sent a letter to Mr Moremi requesting an update on the progress made by the Ministry of Police on the agreed outcomes from the meeting on 25 March 2015. This letter is attached marked **PM16**.
- 65.13. I sent two subsequent emails, on 12 June 2015 and 25 June 2015, to Mr Moremi requesting a response to the letter sent on 8 June 2015. These emails are attached marked **PM17** and **PM18** respectively.
- 65.14. On 3 August 2015, NU and the SJC sent a letter to the Minister of Police via Mr Moremi. The letter noted previous attempts to communicate with the Minister's office and expressed NU's and SJC's frustration at the lack of any response from the Minister to the Khayelitsha Commission's report and recommendations. The letter, attached marked **PM19**, requested that the Minister respond by 5 August to the following requests:



- 65.14.1. The immediate release of the classified report from the police responding to the Khayelitsha Commission's recommendations; and
- 65.14.2. To provide the SJC and NU with up-to-date police-to-population ratios for all police precincts in the country, as well as the number of officers allocated to specialised units.
- 65.15. On 25 August 2015, the SJC and partner organisations organised a march of approximately 500 Khayelitsha community members and supporters from the Western Cape Provincial Parliament to the National Parliament in Cape Town. At the end of the march a memorandum was handed to: the Ministry of Police, represented by Mr Moremi; the Chairperson of the Portfolio Committee on Police, Mr Francois Beukman; and the Chairperson of the Select Committee on Security and Justice, Mr Dumisani Ximbi. The memorandum called for equitable allocation of SAPS resources. This memorandum is attached marked **PM20**. Specifically, the memorandum made five demands, including:
- 65.15.1. The urgent and equitable reallocation of resources -- including qualified, competent, skilled and experienced SAPS personnel to the police precincts in Khayelitsha and the five police precincts with the highest number of serious contact crimes in the Western Cape. This was explained in the memorandum as an immediate need which must also include the FCS units dealing with gender-based violence.
- 65.15.2. Develop a plan to urgently address the need for a rational and equitable redistribution of resources in all nine provinces within six months.
- 65.15.3. Commit immediately to developing and implementing guidelines for visible policing in informal neighbourhoods to ensure the right to life, safety and bodily integrity of the vulnerable households that call these neighbourhoods home within two months.

A handwritten signature in black ink, appearing to be 'R.M.', is located in the bottom right corner of the page.

- 65.15.4. Commit to finalise and implement a national policy on vigilantism within two months.
- 65.15.5. Ensure that the Western Cape Education Department along with other relevant departments and the City of Cape Town address the safety of learners.
- 65.16. On 16 September 2015, the SJC, EE and NU wrote to the Minister via his private secretary requesting a positive response to the memorandum from the respondent by 25 September 2015, and reiterating their intention to support the work of SAPS and develop a constructive relationship with the Ministry of Police. This letter is attached marked **PM21**.
- 65.17. On 25 September 2015, the Chief of Staff within the Department of Police, Ms Catherine Hendricks, sent me a letter responding to the memorandum handed to the Ministry of Police on 25 August 2015. Unfortunately, the letter failed to respond to any of issues raised over the last year by the SJC, EE and NU over the last year and merely proposed "*more consultative meetings with different stakeholders*". This response is attached marked **PM22**.
66. On 8 October 2015, the Premier of the Western Cape released the National Commissioner's response to the recommendations of the Khayelitsha Commission. The National Commissioner had chosen not to make her response public. I attach a copy of the response as annexure **PM23**.
67. In response to the Commission's recommendations about the allocation of resources, the National Commissioner said in **PM23**:

"The issue of the Fixed Establishment (the number of employees that can be appointed in terms of the approved budget per annum) is a legislative matter. The SAPS and other relevant Acts prescribe that the National Commissioner and the Provincial Commissioner, to a certain extent, pronounce based on predetermined financial constraints. There is a Fixed Establishment¹ for the

¹ The SAPS Act clearly indicates that the National Commissioner has the powers to pronounce on the Fixed Establishment of the organisation, in terms of Section 11(2)(b). This also applies to the

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SAPS, the Province and the said stations. In terms of our Organisational Development, over and above the Fixed Establishment, the organisation provides future projections (an ideal RAG) for planning. Provision of new posts depends on fiscal as to what has been allocated to the department. However, the SAPS always strive, in terms of establishment, to advocate 100% in that a post lost is a post filled. SAPS further targets maintenance of a minimum 80% of establishment talks to available resources, i.e. minimum resources that are necessary to deliver a service. In the new recruitment drive of the organisation, the Western Cape is one of the priority provinces. In the recent past, SAPS has provided additional allocations to the three Khayelitsha stations as the SAPS focus has always been on prioritisation of capacitation for its human resource."

68. This response completely fails to address the Commission's criticism or its recommendations. The criticism was about the irrational and racially discriminatory distribution of resources. Instead of addressing the problem, the National Commissioner simply restated how SAPS allocates resources.
69. As we had not received any response from the Minister's office, our legal representatives from the Legal Resources Centre sent correspondence to the Minister. This letter urged the Minister to respond to the Memorandum mentioned previously by 30 November 2015. This letter, dated 18 November 2015, is attached marked **PM25**. I am informed by our legal representatives that no response was received from the Ministers office to this letter.

IV THE INTERSECTION OF CRIME, RACE, POVERTY AND POLICE

70. In this Part, I summarise the evidence of Jean Redpath on the alarming intersection between crimes, race, poverty and police resources in the Western Cape and KwaZulu-Natal. Her evidence shows that poor, Black communities with high crime

delegated function for the Provincial Commissioner in managing the province in this regard. At all times, what guides appointments and filling of vacancies in the SAPS is the Fixed Establishment.
(original footnote)

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rates generally have the lowest police-to-population ratios. Her evidence builds on the evidence that was accepted by the Khayelitsha Commission in the following ways:

- 70.1. It provides an accurate description of each police precinct in the Western Cape according to race, poverty and informal housing;
 - 70.2. It ranks the stations not only by police:population ratios, but also by police:crime rate ratios;
 - 70.3. It conducts the analysis both for the theoretical allocation of resources, and the actual allocation of resources; and
 - 70.4. It applies the analysis (in part) to KwaZulu-Natal.
71. This Part first summarises the evidence for the Western Cape, and then for KZN.

Western Cape

72. In order to demonstrate the connection between race, poverty, crime and police resources, I deal with the following elements that emerge from Redpath's affidavit:
- 72.1. The relation between the theoretical determination and the actual allocation of resources;
 - 72.2. The worst seven stations;
 - 72.3. The general relationship between allocations and crime rates; and
 - 72.4. The connection between poverty, race and allocations.

Theoretical v Actual

73. At the Khayelitsha Commission, Redpath only analysed the actual allocation of police resources. She has now also analysed the theoretical allocation for 2012/13 which was provided to the Commission. The THRR broadly guides the actual allocation, although there are deviations.
74. Redpath concludes that *"the THRR figures, which guide the allocation of resources across the country, appear to prejudice township areas to an even greater extent*

than do actual figures and still leave black township areas at the bottom of the allocation of resources.” This is important for two reasons:

- 74.1. The problem is not merely one of distributing limited resources – it is a fundamental problem with the manner in which SAPS calculates policing needs.
- 74.2. Because the same formula is used to determine ideal needs throughout the country, there can be little doubt that the pattern of discriminatory distribution of resources in the Western Cape is replicated in the other eight provinces as well.

Seven worst stations

75. As explained earlier, the rate of murder is the best predictors of the actual rate of violent crime because it does not suffer from under-reporting. The stations with the highest rates of murder are also likely to be the stations with the highest real rate of violent crime (as opposed to the highest reported rate).
76. The following stations have the highest total number of murders in the Western Cape:
 - 76.1. Nyanga (262);
 - 76.2. Khayelitsha (168);
 - 76.3. Harare (132);
 - 76.4. Kraaifontein (121).
 - 76.5. Gugulethu (129);
 - 76.6. Delft (113); and
 - 76.7. Mfuleni (99).
77. These stations not only have the highest number of total murders, they are also all in the 15 stations with the highest rates of murder by population.
78. These stations – where one would expect police resources to be concentrated – all receive less than the average number of police per 100 000 people, both according

to the theoretical determination, and the actual allocation. In fact, they are in the bottom 15 on both theoretical and actual allocations. The following table demonstrates the perverse correlation (out of 149 total stations):

Station	Murder Rate Rank	THRR Rank	Actual Rank
Nyanga	3	148	146
Khayelitsha	4	144	134
Gugulethu	5	146	138
Mfuleni	8	138	141
Harare	12	149	149
Delft	14	141	144
Kraaifontein	15	142	142

79. In short, the stations with the most violent crime are amongst the least resourced according to both the "perfect" theoretical allocation, and the actual allocation of resources.
80. Not only are these stations relatively worse off, they are absolutely below minimum international guidelines. The United Nations recommends a minimum of 220 police per 100 000 people. The most-resourced of these seven stations is Khayelitsha, which has only 190 police:100 000 people. The worst, Harare, has only 111 police:100 000 people. Even on the theoretical allocation, Harare (158) and Nyanga (205) fall below this minimum.

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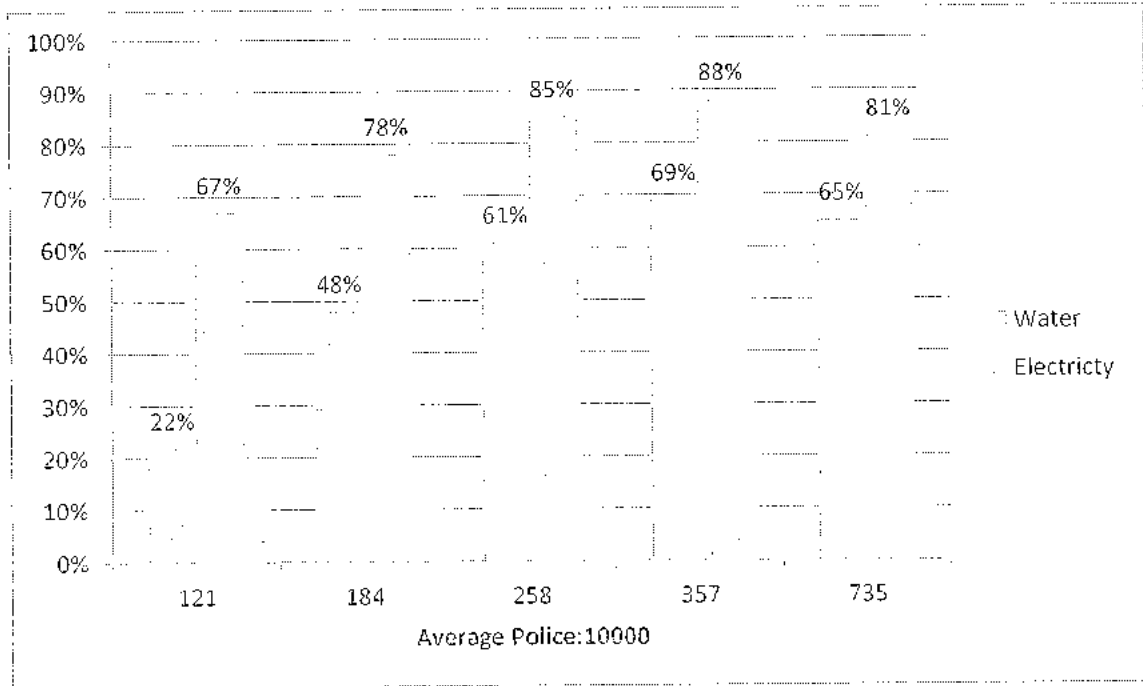
Crime Rates

81. This is not merely an instance of these seven stations – there are others that have similarly high rates of crime and low rates of policing. Indeed, as Redpath shows, the allocation of police resources is negatively correlated to the murder rate – the higher the murder rate, the fewer police officers a station is allocated. Because murder is the best predictor of actual violent crime, it is almost certain that the same trend applies for those crimes.
82. The same is not true for the level of all reported crime. That correlates positively with the allocation of human resources – the more crimes are reported, the more police officers are provided to the station. This trend demonstrates the problem. Poor areas with high crime rates and poor policing are likely to have far lower rates of reported crime. People do not report crime if they do not believe it will have any effect. As Redpath puts it: *“using total reported crime as a yardstick tends to reinforce the existing trends”*. Stations that are well-resourced provide a good service, therefore people report more crime, therefore the THRR grants them more resources
83. What is even more concerning is that the correlation holds when we consider both poverty and race. These seven areas are all poor, predominantly Black, with high levels of informal settlements on the edges of the City of Cape Town. They are areas where Black people were forced to live, either by evictions, or racist spatial planning.

Poverty

84. Redpath uses service delivery variables – the percentage of households in an area that have electricity and piped water – to measure levels of poverty and informal housing in each police precinct. The fewer people receive electricity and piped water, the higher the levels of informal housing and poverty. Redpath then compares that data to the actual police:population ratio by dividing the stations into quintiles.

85. When analysing both the Western Cape and KwaZulu-Natal together, that analysis reveals a disturbing trend demonstrated in the graph below:



86. Each pair of columns represents a quintile. The number below the columns is the average police:10000 ratio for all the stations. The columns on the far left represent the bottom quintile which has an average of 121 police: 100 000 people. In those precincts, 22% of households have piped water, and 67% of households have electricity.
87. Those stations that have the lowest percentage of water and electricity also have the lowest police:population ratios. That trend holds for the bottom four quintiles – the more people have water and electricity – the more formal housing and the richer the population – the more police an area receives.
88. The top quintile – the one with the highest police:population – is an exception. Redpath explains that the quintile includes two types of areas that skew the figures – city centres and small rural areas. Both have abnormally high police:population ratios because: (a) city centres have low permanent populations but a high influx of

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daily commuters; and (b) rural areas serve small populations but must have a minimum number of police to offer a basic service.

89. As Redpath summarises: *"The overall trend is clear – higher levels of water and electricity service provision are associated with higher levels of police resourcing."*
90. Even when the Western Cape is analysed separately, there is *"a statistically significant relationship between lower levels of police resourcing and lower levels of service provision in piped water"*. It is still the case that the quintile where fewest houses have piped water have the lowest levels of police:population. And the quintile with the lowest police:population is the one with the least piped water.

Race

91. Unfortunately, given the way that racial profiles are collected in the census, it is not possible to align those statistics directly with the boundaries of police station precincts. Redpath does not, therefore, rely directly on data showing racial demographics. However, there are two reasons why this Court can comfortably accept that the areas with higher Black populations also receive fewer police resources.
92. First, in South Africa – and particularly in the Western Cape – race is directly related to informal settlements and to poverty. In Redpath's words: "poorer black people tend to live in areas where informal settlements are more prevalent." If police resources are inequitably distributed according to poverty, they are also inequitably distributed according to race.
93. Second, I can confirm from my own knowledge that these areas are predominantly Black, working class and poor, with high levels of informal housing. Jean Redpath also confirms that, based on her expert knowledge, the areas we have identified as the seven worst stations – Khayelitsha, Nyanga, Gugulethu, Kraaifontein, Mfuleni and Delft – are all primarily Black, working class and poor with high levels of informal housing.

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94. In short, the allocation of police resources perpetuates spatial apartheid. Those areas where Black people were forced by history to live, have the lowest police:population ratios.

KwaZulu-Natal

95. The data available for KwaZulu-Natal is not as detailed as for the Western Cape. However, Redpath's analysis shows the following.
96. First, many stations in KZN are even less resourced than even the worst-resourced station in the Western Cape. Harare has 110 police:100 000. There are 29 stations in KZN that have fewer than 110 police:100 000 people. The least-resourced station – Intsikeni – has only 57 police per 100 000 people.
97. Second, the worst-off stations are not, as in the Western Cape, urban townships. Instead, they are primarily rural or peri-urban Black areas. There is still a connection between race, poverty and police resources.
98. Third, there is not, however, a relationship with murder rates. In KwaZulu-Natal, unlike in the Western Cape, those stations which have a higher rate of murder also have more police officers.

V THE ALLOCATION OF RESOURCES

99. In this Part, I explain how the situation identified by the Khayelitsha Commission, and explained by Redpath came about. How does SAPS allocates resources so that those areas that are most in need get the fewest police officers? The Part is divided into the following sections:
- 99.1. The applicable legal framework;
- 99.2. The theoretical allocation of resources; and
- 99.3. The actual allocation of resources.

The Applicable Legal Framework

100. As I expand on below, part of the problem in the allocation of resources is a disagreement, or misunderstanding between the national and provincial arms of SAPS about their relative responsibilities. It is necessary to have a clear idea of how the Constitution and the SAPS Act allocate powers and obligations to the relevant functionaries.
101. In terms of s 205(3) of the Constitution, SAPS is constitutionally obligated 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."*
102. Section 206(1) of the Constitution obliges the Minister of Police, as the responsible member of cabinet, to determine national policing policy. He is required to consult provincial governments and take into account provinces' policing needs and priorities.
103. The National Commissioner, under s 207(2) of the Constitution, *"must exercise control over and manage the police service"* in accordance with the national policing policy determined by the Minister of Police. The National Commissioner, with the concurrence of the Premier, appoints a provincial commissioner for each province (s 207(3)). 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)."*
104. Before I move to the more specific provisions of the SAPS Act, it is worth noting the general constitutional obligations that bind all organs of state, including SAPS:
- 104.1. In meeting its obligations, SAPS is required by s 7(2) of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights.

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- 104.2. Section 9 read together with s 195(1)(d) binds SAPS to the equitable and unbiased allocations of resources.
- 104.3. Section 195(1) requires SAPS to be professional, responsive to people's needs, and promote the "*efficient, economic and effective use of resources.*"
105. The SAPS Act gives effect to s 205 of the Constitution by establishing a national police service. In terms of the preamble to the Act, the objects of this service are to:
- 105.1. Ensure the safety and security of all persons and property in South Africa;
- 105.2. Uphold and safeguard the fundamental rights over everyone as guaranteed in Chapter 3 of the Constitution;
- 105.3. Ensure cooperation between the police service and the communities it serves in the combatting of crime;
- 105.4. Demonstrate respect for the victims of crime and an understanding of their needs; and
- 105.5. Ensure civilian supervision over the police service.
106. Section 11 of the SAPS Act gives effect to the National Commissioner's constitutional obligation to exercise control over and manages the police service. This includes:
- 106.1. Developing a plan before the end of each financial year which sets out the priorities and objectives of policing for the following year (s 11(2)(a));
- 106.2. Determining the fixed establishment of the police service, as well as the number and grading of posts (s 11(2)(b)); and
- 106.3. Determining the distribution of the numerical strength of the police service, after consultation with the Board of Commissioners (s 11(2)(c)).
107. According to section 10(1) of the Act, the Board of Commissioners is comprised of the National Commissioner and all of the Provincial Commissioners.
108. However, while s 11 seems to afford the National Commissioner the primary role in determining the human resource allocation, s 12(3) allocates a vital role to the provincial commissioners. It reads: "*A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province*

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among the different areas, station areas, offices and units." This apparent overlap between the powers of the National and Provincial Commissioners is part of the reason for the current discriminatory allocation of resources.

109. The Minister may, in terms of section 24(1)(aa) of the Act, make regulations regarding "*the fair distribution of and access to police services and resources in respect of all communities.*" The Minister has made such regulations. Regulation 3 of the Regulations for the South African Police reads:

"(1) Subject to the provisions of subsection (2) of section seven of the Public Service Act, 1957 (Act 54 of 1957), the fixed establishment of the Department shall be determined by the Minister.

(2) The number and grading of posts in the various branches shall, with due regard to the provisions of subregulation (1), be determined by the Commissioner in consultation with the Minister.

(3) The distribution of the strength of the Force among the different divisions, police districts, station areas, offices, units or other institutions of any nature whatsoever, shall, subject to the provisions of this regulation, be determined by the Commissioner."

110. The regulations are incompatible with the provisions of ss 11 and 12 of the Act. There are at least two contradictions:

110.1. Section 11(2)(b) assigns the Commissioner the responsibility for determining the fixed establishment, while regulation 3(1) purports to afford that power to the Minister; and

110.2. Section 12(3) affords the Provincial Commissioners the power to distribute the service within their province, whereas regulations 3(2) and (3) reserve that power for the National Commissioner.

111. It is, fortunately, not necessary for this Court to fully untangle the respective powers of the Minister, the National Commissioner and the Provincial Commissioner. The Applicants contend that the three functionaries are jointly responsible for ensuring a

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fair and equitable distribution of police resources. However, as I explain in more detail later in this Part, the Applicants will request a finding confirming the Provincial Commissioner's independent power under s 12(3) to "*distribute*" resources within his province.

The Theoretical Determination

112. In this section, I first describe the model that SAPS uses to determine the theoretical, or ideal number of policemen required for each station. I then briefly summarise the discriminatory results of that model. Lastly, I discuss the reasons why the model produces those results.
113. I note that the Applicants are only concerned with human resources, not with other physical resources such as vehicles, computers, infrastructure and so on. The primary determinant of how those resources are distributed is the number of police officers. Human resources are therefore the primary driver of physical resources. To the extent that human resources are unfairly distributed, the same is likely to be true of other physical resources.

The model

114. The first stage in the allocation of human resources is the theoretical determination of the resources needed by each police station. This determination does not take into account available resources. It simply asks how many policemen and women will be needed to perform all the tasks that each station is required to perform.
115. The determination is known as the Theoretical Human Resource Requirement (THRR) and is calculated at a national level. The person responsible for the process is Brigadier Leon Rabie, who testified before the Khayelitsha Commission. I attach his statement and relevant annexures marked **PM25**. A summary of his testimony appears at pages 243-7 of the Commission's report.

116. The THRR is based on a complex formula that considers a wide range of variables, including: population size, prevalence of all types of crimes, the type of station, the size of the area, transient populations, unemployment levels, the presence of informal settlements, the topography of the area, the distance from courts and the number of schools, malls, highways and liquor outlets in the area. It uses different formulae for determining the number of detectives, visible policing, crime intelligence and administrative staff that each station would require to perform its task. For example:

116.1. The number of detectives is based on the number of reported crimes and an assessment of how long a detective will need to properly investigate each type of crime.

116.2. Visible policing is determined primarily by reported crime rates and population. One post is provided for every 20 contact crimes, and for every 5000 people. That number is then adjusted by considering environmental factors, including informal housing.

116.3. The number of police required to staff a Community Service Centre is determined by the number of documents certified, cases registered, accidents dealt with, and so on. Importantly, the determination of the THRR depends on information supplied by each station to the national office in Pretoria.

117. The THRR is also meant to give effect to policy decisions taken by SAPS. If SAPS determines that all stations must be open 24 hours a day, the THRR determines that even the smallest station must have at least 16 personnel. Similarly, when legislation imposes additional requirements on SAPS, the expected burden of those requirements needs to be worked into the calculation.

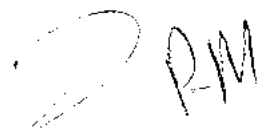
The results

118. The Applicants do not dispute that the exercise of determining the needs of stations is a difficult one. Nor does it assert that SAPS has designed a system that

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intentionally discriminates against poor, Black people. It accepts that the THRR was developed to meet a particular need – an assessment of how many police officers should ideally be allocated to each station. That is a complicated task.

119. However, despite the efforts of Brigadier Rabie and his team the THRR returns results that are patently discriminatory. Redpath's analysis in the previous Part shows not only that the actual distribution of police resources tracks lines of race and wealth, but the theoretical allocation does as well. The THRR ends up providing more resources to rich, white, low-crime areas than poor, Black, high-crime areas.
120. Of course, some of the discrepancies in the tables above have entirely reasonable explanations. For example:
- 120.1. The City of Cape Town has a low permanent population, but a massive transient population and a high number of total crimes. That may also be true, for example, of Wynberg. The THRR grants additional resources to areas with transient populations, and assigns detective resources based on crimes.
- 120.2. Smaller stations serving small, dispersed communities will naturally have higher police-to-population ratios, because they require a certain minimum compliment to function.
- 120.3. Table Bay Harbour is another anomaly which has a high number of police to deal with crime in and around the harbour, despite the small number of permanent residents in the area.
121. Many other individual cases may also have explanations.
122. But those sort of anomalies cannot explain the clear pattern of discriminatory distribution of resources. It cannot explain why, almost without exception, relatively rich, predominantly white areas with very low contact crime rates have far more police for every 100 000 people than poor, predominantly Black areas with high contact crime rates. The determination of resources – even at an ideal, theoretical level – results in an outcome that discriminates against Black people on the basis of

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their race. As the Commission found, no member of SAPS was able to provide a satisfactory explanation for the pattern of discrimination that the THRR creates.

123. The Applicants do not have the THRR determination for other provinces. It has asked SAPS for that data, but SAPS has refused to provide it (despite the recommendation of the Khayelitsha Commission that the information should all be publicly available). However, given that the same formulae are applied throughout the country, there can be little doubt that the disparities in resource allocation identified in the Western Cape are replicated in many if not all of the other eight provinces. We invite SAPS to provide the relevant data to prove that expectation incorrect.


The reasons

124. Why does the THRR – which is designed to achieve a fair outcome – achieve the opposite? There are a number of reasons for these results. Drawing on the testimony of Ms Redpath, the Commission identified the following five explanations:

124.1. The THRR is highly complex. It is so complex that many people within SAPS do not understand it. They view it as "irrational" and as preventing them from doing their job, rather than facilitating it.

124.2. The THRR is not publicly available nor debated, even within SAPS or by the key oversight bodies, such as the national Parliament and the provincial legislature. As a result, it has not been subjected to independent oversight.

124.3. The data provided by police stations used to calculate the THRR is often inaccurate. Brigadier Rabie himself acknowledged that police stations often fail to provide data or (intentionally or unintentionally) provide inaccurate data which can dramatically affect the determination. As recorded in a document titled *Distribution of the Fixed Establishment: Clusters and Police Stations: 2012/2013 Financial Year: Implementation Guideline*:

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"Problems were experienced from the onset as provinces did not audit some data input sheets properly prior to submission. The risk was identified that statistics are being inflated to secure an increased allocation."

I attach a copy of this document as annexure **PM26**.

- 124.4. The weightings attached to different environmental factors may result in over- or underestimation of the policing implications of those factors. For example, "number of shopping malls with more than 100 shops" introduces a 5% for the sector team and crime prevention component of policing whenever one or more such malls is present in the policing area. As Redpath points out, there is no explanation of why 5% loading is applied and not 2% or 12%. It is also not clear that malls, which frequently have their own security, necessarily increase the burden of sector policing in a uniform manner, divorced from their context and in comparison to alternative forms of shopping.
- 124.5. There appears to be no practice of checking the system against a simple per capita calculation to check for anomalies. As Redpath explains, this is vital to have a "common sense" check on the operation of the system. However well it is designed, it needs to be tested against experience. If it is creating unjustifiable results, there is something wrong with the system.
125. In addition, the Applicants believes the model suffers from at least the following flaws:
- 125.1. It does not adequately account for under-reporting of crime. Not all crime is reported. And crime is less likely to be reported in areas – such as Khayelitsha – where the residents do not believe that the police will be able to provide any assistance.
- 125.2. The determination also becomes a self-fulfilling prophecy because it is based on current capacity. If people are dissuaded from reporting crime because the station is overburdened and ineffective, the THRR will not determine that

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it needs more resources to alleviate the burden and encourage further reporting. It simply assumes that the current demand is the actual demand.

- 125.3. Because it purports to provide the ideal, theoretical requirement, the THRR does not seek to prioritise resources by, for example, granting more posts to poor areas with high rates of contact crime. That would not be a problem if the Provincial Commissioners used the THRR allocation as a starting point and then actively engaged in allocation according to the provinces' priorities. As I explain below, that does not happen. The failure to build in any form of theoretical prioritisation transfers to the actual allocation of resources.
126. In short, the THRR fails to take account of: (a) the burden of violent crime on residents of poor, Black areas; and (b) the increased burden of policing those areas. Despite its intention to dispassionately determine resource needs, it produces results that are constitutionally indefensible.

The Actual Allocation

The method

127. The THRR determines the ideal requirement without regard for the available budget. Once the budget is determined the National Commissioner determines the actual fixed establishment of SAPS based on the resources available. Brig Rabie testified that in 2013/14 SAPS was only able to provide 59% of the total posts that the THRR determined were required, and 68% of posts assigned for police stations.
128. The reduction from the 100% THRR determination to the 68% actual allocation is, according to Brig Rabie, meant to happen in two stages:
- 128.1. National SAPS determines the number of posts that each station will in fact receive. This was known as the Resource Allocation Guide (or RAG) and is now known as the "fixed establishment". Giving consideration to the need for minimum numbers of staff at certain stations, it appears that the fixed

establishment is generally an across-the-board reduction from the 100% of the THRR to the 68% of available posts, and

- 128.2. The Provincial Commissioners are then meant to distribute the allocated resources amongst the stations to give effect to the province's priorities. As the Commission summarised his evidence, Provincial Commissioners could "*deploy more resources to a particular station that needs them, as long as the basic staffing requirements of each police station are maintained.*" (245) The Provincial Commissioner could, for example, "*choose to staff the three Khayelitsha police stations, even within the current fixed establishment, at 100% of the THRR by moving members from police stations where the circumstances are less exigent.*" (245)
129. In Brig Rabie's view, the THRR was largely intended to: (a) determine the allocation of resources between provinces; and (b) provide a guide to Provincial Commissioners on how to distribute their resources. It is not an absolute determination of the distribution of resources, which remains in the Provincial Commissioner's discretion based on priorities.
130. This view was not shared by the then Provincial Commissioner, General Lamoer. He testified before the Commission that he could only re-allocate resources from the fixed establishment on a temporary basis. In his words:
- "The utilisation of my staff, yes that is my responsibility. I can shift people to do a specific task in a specific area, but I can't shift the funded posts to that. That means in simple terms, Chair, Khayelitsha, for argument sake, have 100 people, they are struggling with 100 people. With the input from the station commander, with the request from the station commander, I can say I will give you the 50 members but on a short-term basis, just to address a specific crime threat. But those members will never be able to be placed permanently at that specific station."* (transcript at 6507)
131. I attach a copy of the relevant portion of Gen Lamoer's transcript as annexure **PM27**.

132. As I expand on below, this breakdown between the national and provincial offices concerning the responsibility for distributing resources is a fundamental flaw in SAPS's current system.

The results

133. As with the theoretical allocation of resources, the actual allocation of resources produces a pattern that, in the words of Commissioner O'Regan, "is very close to an *apartheid list*." (transcript page 6803, line 8, attached as **JR4** to Redpath's affidavit) The list she refers to is reproduced in Redpath's report to the Commission which is attached to her affidavit as **JR3**.
134. When these data are compared to the racial make-up of the Western Cape's police precincts, the following pattern emerges: The areas with the highest Black and population, and the highest rates of murder have the lowest number of police per 100 000 people, and the lowest number of police-per-murder.

The Reasons

135. As I explain further below, there can be no defensible reason for this allocation. The true reason appears to be the disagreement or misunderstanding between the National and Provincial levels of SAPS about who has the power and the responsibility to ensure an equitable distribution of police resources. National believes that Provincial will distribute resources, and Provincial believes that it must (largely) abide by the THRR. As a result, neither applies its mind to how police resources should be distributed in a province.
136. It is important to stress that, when it comes to the actual allocation (rather than the theoretical determination), SAPS can and must prioritise. It must decide whether policing property crime in Constantia and Sea Point is as important as policing rapes and murders in Khayelitsha and Nyanga. It must also take into account the serious under-reporting of crimes in areas where confidence in police is low,

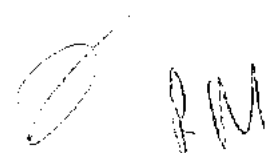
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VI UNFAIR DISCRIMINATION

137. Section 9(4) of the Constitution requires national legislation to prevent or prohibit unfair discrimination. That legislation is the Equality Act. I have been advised that allegations of violations of the right to equality must be brought to this Court in terms of the Equality Act.
138. The Applicants argue that the Respondents' practice of allocating police human resources unfairly discriminates on the basis of race and poverty. The discrimination is indirect. It is a consequence of apartheid's legacy of overlapping lines of race, poverty and geography. But SAPS failure to act on the recommendations of the Khayelitsha Commission to remedy a clear pattern of under-resourcing poor, Black areas that are most in need of policing is certainly unfair.
139. The Equality Act includes both a general prohibition on unfair discrimination (s 6) and a specific prohibition on unfair discrimination on the ground of race, including examples of unacceptable practices (s 7).
140. The unfair discrimination analysis happens in three stages:
- 140.1. The complainant must identify the grounds of discrimination.
- 140.2. The complainant must show that there is discrimination.
- 140.3. Once discrimination is established, the court must determine whether the discrimination is fair or unfair. The onus is on the respondents to establish that the discrimination is fair.

Grounds of discrimination

141. The Equality Act defines the "*prohibited grounds*" to include both listed and unlisted grounds. Race is a listed ground in part (a) of the definition.



142. Poverty – or socio-economic status – is not expressly listed. However, the Applicants submit that it should nonetheless be covered by the grounds of social origin and birth, which are listed grounds.
143. Alternatively, poverty is clearly a ground that would be covered by part (b) of the definition, which reads:

"any other ground where discrimination based on that other ground-

- (i) causes or perpetuates systemic disadvantage;*
- (ii) undermines human dignity; or*
- (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a)"*

144. The Applicants submit that discrimination based on poverty meets these requirements. It perpetuates systemic disadvantage, undermines human dignity and affects people's rights and freedoms in a manner comparable to discrimination on other grounds. The legislature recognised this in s 34 of the Equality Act, which reads:

"In view of the overwhelming evidence of the importance, impact on society and link to systemic disadvantage and discrimination on the grounds of HIV/AIDS status, socio-economic status, nationality, family responsibility and family status-

- (a) special consideration must be given to the inclusion of these grounds in paragraph (a) of the definition of 'prohibited grounds' by the Minister;*

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(b) *the Equality Review Committee must, within one year, investigate and make the necessary recommendations to the Minister."*

145. The Equality Act even defines "socio-economic status" to mean: "*includes a social or economic condition or perceived condition of a person who is disadvantaged by poverty, low employment status or lack of or low-level educational qualifications*". Although s 34 came into force on 1 September 2000, no measures have (to the best of the Applicants' knowledge) been taken by the Minister of Justice or the Equality Review Committee. Accordingly, unfair discrimination on the basis of poverty is prohibited by the Equality Act.

146. However, I stress that the Applicants rely on the overlapping or intersectional discrimination on the grounds of both race and poverty. As explained above, poverty and race remain intimately linked in South Africa. The discrimination here affects people because they are both poor and Black.

Discrimination

147. Discrimination is defined in the Equality Act as:

"any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –

(a) imposes burdens, obligations or disadvantages on; or

(b) withholds benefits, opportunities or advantages from,

any person on one or more of the prohibited grounds."

148. In this instance, both the THRR (a policy) and the actual allocation of resources (a practice, condition or situation) indirectly discriminate on the basis of race and poverty. The Respondents do not directly discriminate against people on the basis of race poverty – they have not sought to disadvantage poor Black communities. However, the correlation of race and poverty with geography results in indirect racial discrimination. The discrimination operates as follows:

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- 148.1. In both theory and practice, stations that serve populations with high proportions of poor Black persons have significantly lower police-to-population ratios than stations that serve a predominantly rich, white population.
- 148.2. The poor Black stations generally also have far higher rates of contact crime.
- 148.3. The lower police-to-population ratios in poor Black areas contributes to inefficient and ineffective policing.
- 148.4 This imposes serious burdens on poor Black people who are less safe and whose rights to dignity, life and freedom from violence are seriously threatened as a direct result.
149. Section 7 of the Equality Act identifies practices that constitute unfair discrimination on the basis of race. These include "*the provision or continued provision of inferior services to any racial group, compared to those of another racial group*" (s 7(d)). Providing fewer policemen to Black areas that have higher rates of contact crime constitutes the provision of an "*inferior service*".

Unfairness

150. The Equality Act does not prohibit all discrimination, only discrimination that is unfair. In terms of s 14(2), when it determines whether or not the discrimination is fair, this court must have regard to:
- 150.1. the context;
- 150.2. the factors listed in s 14(3); and
- 150.3. "*whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.*"
151. The last factor is not relevant here. I consider the first two.

Context

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152. There are two elements of context that are particularly relevant.

153. First, s 4 of the Equality Act explains that:

"In the application of this Act the following should be recognised and taken into account:

- (a) The existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, brought about by colonialism, the apartheid system and patriarchy; and*
- (b) the need to take measures at all levels to eliminate such discrimination and inequalities."*

154. The Act – like s 9(2) of the Constitution – requires the reversal of apartheid inequalities. Instead, SAPS approach to allocating human resources entrenches those inequalities.

155. Second, SAPS is aware of this discrimination. It has been aware of it since at least August 2014 when the Khayelitsha Commission released its report. Moreover, its own officials have been unable to defend it. General Lamoer acknowledged it was irrational. The National Commissioner's response to the Premier does not even attempt to defend the distribution of resources.

156. Yet, despite its knowledge of the problem and its absence of any justification, it has done nothing to remedy to it. Indeed, it has expressly refused to follow the recommendation of the Khayelitsha Commission that it should take steps to remedy the unfair and discriminatory distribution of resources.

Section 14(3)

157. Section 14(3) includes a number of factors that are drawn from the Constitutional Court's jurisprudence on s 9 of the Constitution, and the ability to justify unfair discrimination under s 36(1) of the Constitution. A careful consideration of these factors shows that the discrimination is undoubtedly unfair.

158. The following s 14(3) factors are relevant:

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158.1. "Whether the discrimination impairs or is likely to impair human dignity":

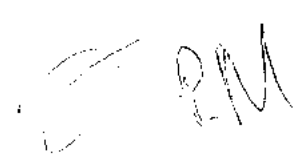
Allocating fewer policemen to areas where they are most needed will plainly impair human dignity. The mere fact of such a racist allocation will impair human dignity because it sends the symbolic message to poor Black people that they are less worthy of protection than people of other races, or people of a higher socio-economic status. But it also places poor Black people at a higher risk of being the victims of crime, which will also impair their dignity.

158.2. "The impact or likely impact of the discrimination on the complainant": The

discrimination has a severe impact on the residents. It is less likely that a crime in a poor, Black area will be prevented. It is less likely that crimes in those areas will be properly investigated and prosecuted. People in those areas feel, and are in fact, less safe. Their constitutional rights to life, dignity, privacy, to be free from private violence, to bodily integrity, to property are all at greater risk of being violated.

158.3. "The position of the complainant in society and whether he or she suffers from

patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage": It is deeply disturbing that the logic of apartheid geography continues to operate in the manner in which police resources are allocated. Given the history of discrimination, Black areas with high crime rates should have higher police to population ratios than low-crime, White areas. That would further the Equality Act's and the Constitution's goal of substantive equality. Section 9(2) of the Constitution reads: "To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." Under this provision would be permissible for SAPS to allocate relatively more resources to previously disadvantaged areas. Instead, the reverse is true. The constitutional need to redress the position of Black people also applies to poor people. The Constitution's vision of

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substantive equality also requires reducing inequalities between people of different socio-economic status.

158.4. "The nature and extent of the discrimination" and "whether the discrimination is systemic in nature": The discrimination is widespread and systemic. It is the result of fundamental failures in the manner in which SAPS allocates human resources. It has demonstrably discriminatory results in the Western Cape and KwaZulu-Natal, the only provinces for which data is available. Given its causes, it almost certainly extends to the other nine provinces as well.

158.5. "Whether the discrimination has a legitimate purpose": There is no legitimate purpose in a system that systemically provides fewer police to areas where there are higher levels of serious, violent crime. Nor is there any legitimate purpose in providing more police officers in predominantly rich white areas than in predominantly poor and Black areas. Indeed, as I have explained above, that is not the purpose of the allocation system; the purpose of the system must be to provide a fair and efficient allocation of human resources. That is obviously legitimate.

158.6. "Whether and to what extent the discrimination achieves its purpose": The system does not achieve its purpose. It does not result in a fair and efficient allocation of resources. It results in resources being distributed in an irrational and discriminatory manner away from the areas where they are most sorely needed. In doing so, it perpetuates the legacy of spatial apartheid.

158.7. "Whether there are less restrictive and less disadvantageous means to achieve the purpose": There are obviously ways to achieve a more rational and equitable distribution of resources at both the theoretical and actual level. These include:

A handwritten signature consisting of a large, stylized 'D' followed by the initials 'P.M.' written below it.

158.7.1. Revising the THRR process to take account of the discrepancies that arise as a result of the current system. In her affidavit, Redpath suggests a method that would result in a far more justifiable distribution of police resources. There are undoubtedly many other methods that would also result in a more justifiable theoretical allocation.

158.7.2. Clarifying the role of Provincial Commissioners in distributing resources based on the THRR. The current position means that (with only minor exceptions) an ideal allocation is transposed without consideration into a reality of limited resources. As a result, SAPS fails to prioritise need by diverting additional resources to those areas with higher crime burdens. Indeed, SAPS should have a policy with regard to the proper allocation of police resources.

Conclusion

159. SAPS' current resource allocation policy has resulted in an inferior provision of services to largely Black communities, while traditionally affluent and largely White communities receive the bulk of both human and physical resources. We hold that this discrimination based on race is both unfair and irrational.

160. The areas most heavily impacted by SAPS' resource allocation policy are among the poorest and most crime ridden areas in the country. People living within these areas still bear the burden of apartheid, with a legacy of violence and exclusionary urban planning. This policy has a direct and immediate impact of people's fundamental rights to dignity, life and security.

VII REMEDY

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161. The relief the Applicants seek to cure the systemic discrimination against Black communities reflects the dual recommendation of the Khayelitsha Commission:
- 161.1. Systemic relief to amend the national allocation of police human resources;
- and
- 161.2. Interim relief for the people of the Western Cape.
162. In addition, the Applicants seek complementary relief that is necessary to ensure that this court's order is effective.
163. In this Part, I justify that relief as follows:
- 163.1. This court's remedial powers under the Equality Act;
- 163.2. The need for declaratory relief;
- 163.3. Urgent relief in the Western Cape; and
- 163.4. Systemic national relief.

Remedial Powers

164. Section 21 of the Equality Act grants this court wide remedial powers. It has the power to grant an "*appropriate order*", which may include:
- 164.1. a declaratory order;
- 164.2. an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination;
- 164.3. an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
- 164.4. an order for the implementation of special measures to address the unfair discrimination in question;
- 164.5. an order requiring the respondent to undergo an audit of specific policies or practices as determined by the court;
- 164.6. a directive requiring the respondent to make regular progress reports to the court regarding the implementation of the court's order;

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165. Those powers need to be read together with s 172(1)(b) of the Constitution which empowers any court deciding a constitutional matter to grant "*any order that is just and equitable*".


Declarations

166. The Applicants seek two declarations from this court that are necessary for very different reasons.
167. First, it asks for a declaration that the criteria and methods for allocating resources produce results that unfairly discriminate on the basis of poverty and race. This declaration is necessary to vindicate the rights of those who live in poor, Black areas and have borne the brunt of the irrational and discriminatory distribution of policemen.
168. Second, the Applicants request a declaration that s 12(3) of the SAPS Act grants Provincial Commissioners the power to determine the distribution of police resources between stations within their province. This includes the distribution of permanent posts under the fixed establishment, not merely temporary posts.
169. This declaration is vital to make it clear where the power and the responsibility lies to ensure that the distribution of human resources within any province is fair and equitable. At present, the confusion or disagreement between the national and provincial arms of SAPS exacerbates the discrimination that flows from the THRR. National believes that provincial should cure anomalies, while provincial believes it lacks the power to do so.

National Relief

170. The primary recommendation of the Khayelitsha Commission on the allocation of human resources was:

"that the [human resource allocation] system be overhauled as a matter of urgency. Accordingly, the Commission recommends that the Minister of

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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."

171. In addition, the Commission recommended that the new system should be subject to oversight by the Civilian Secretariat and the provincial governments. As noted earlier, the unofficial secrecy of the system for allocating resources, and the allocation itself, is one of the reasons that such unjustifiable disparities have been allowed to persist.
172. The Applicants ask for a similar order as its primary form of relief: An order compelling the Minister and the National Commissioner to: (a) re-evaluate the distribution of human resources; and (b) ensure that both the re-evaluation process and the new system are open to public scrutiny, and institutional oversight. The entire process of developing a new system and implementing it should be complete within four years.
173. The Applicants believe that it is necessary for this court to retain supervision of the process of revising the system for allocation. The review and implementation will be a lengthy and complicated process. Without supervision, the Applicants fear that it may be difficult to ensure compliance with the order.
174. The Minister and the National Commissioner have demonstrated through their respective responses to the Khayelitsha Commission that they do not believe there is anything wrong with the current system for allocating human resources. Continued court supervision will be extremely helpful to ensure that the Minister and the National Commissioner comply with their obligations under the Equality Act and the Constitution as quickly and transparently as possible.
175. The supervision the Applicants seek is not onerous. It merely requires the Minister and/or the National Commissioner to report to the court every three months on the progress it has made, and to make the reports publicly available. The Applicants and

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(any other interested party) will be afforded an opportunity to comment on those reports. The court retains discretion to supplement its order if it becomes necessary.

176: The order is not intended to interfere with SAPS' discretion to determine how to allocate resources, but merely to ensure that:

176.1. SAPS follows a transparent process that is open to public participation in developing a new system;

176.2. The new system complies with the Equality Act; and

176.3. SAPS conducts the re-evaluation as speedily as possible.

177. The type of light supervision order that the Applicants propose is the best means to achieve those goals. It does not interfere with the separation of powers as it leaves all the substantive decisions to the bodies who are constitutionally required to make them – the Minister and the National Commissioner. It merely provides a framework for the implementation of the order to deal with unexpected difficulties and to encourage co-operation between all affected parties.

Western Cape Relief

178. While the problem of allocating resources is a national problem that requires a national solution, the work of the Khayelitsha Commission demonstrates the indefensible disparities in resource allocation in Khayelitsha specifically, and the Western Cape more generally. As a result of the clear evidence before it, the Commission recommended that:

"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." (450)

179. The Commission also recommended that, until a more permanent solution was found, the Provincial Commissioner should not draw assigned staff away from the

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Khayelitsha police stations, and should instruct any SAPS members stationed in Khayelitsha but deployed elsewhere, to return. The clear purpose of the recommendation was to provide an interim solution to the residents of Khayelitsha, while a permanent amendment was made to the THRR.

180. But the discrimination is not limited to Khayelitsha. While the Commission could only make recommendations concerning Khayelitsha, this court can make a wider order that would require the Provincial Commissioner to address the problem in the province as a whole.

181. Again, the Applicants believe that supervision is necessary. SAPS has not demonstrated the willingness to solve this problem. The same type of limited court supervision will protect the rights of the residents of Khayelitsha and other similar areas, without unduly intruding into the role of SAPS.

182. The Applicants therefore seek an order:

182.1. Compelling the Provincial Commissioner to:

182.1.1. Within three (3) months, prepare a plan for the re-allocation of resources within the Western Cape to address the most serious disparities in the province; and

182.1.2. Submit that plan to the court and advertise it for public comment;

182.2. The Court will then hear argument on whether the plan is appropriate;

182.3. It will approve the plan or an amended version of it;

182.4. The Provincial Commissioner will implement the plan within 3 months, and report to the Court monthly on progress in implementing the plan.

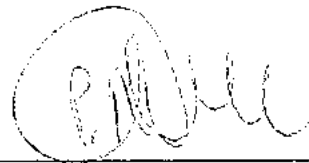
VIII CONCLUSION

183. The police are constitutionally obligated to ensure that everyone has equal protection and benefit of the law, and this includes the full and equal enjoyment of all rights and freedoms by poor and working class informal communities. People living in poor,

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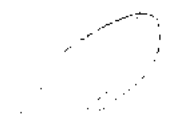
Black and largely informal communities have a constitutional right to feel as safe as someone living in an affluent community like Camps Bay or Rondebosch.

184. Through arbitrary systems of resource allocation, SAPS is perpetuating unfair discrimination against poor and working class communities. This impairs the dignity of members of these communities, and jeopardises their rights to life, freedom and security of the person, and to bodily integrity. Rectifying this misallocation of resources will not immediately resolve the problem of crime in these areas. But it will help. It will make it easier for policemen to prevent and investigate crime in the areas where those basic tasks are most needed.
185. Despite the protracted, sustained and lawful efforts of the Applicants to address this discrimination, SAPS remains recalcitrant. Without the intervention of this Honourable Court, poor working class communities will continue to suffer the arbitrary deprivation and violation of their rights.



PHUMEZA MLUNGWANA

THUS SIGNED AND SWORN TO at CAPE TOWN on this 20 day of MARCH 2016 the deponent having acknowledged that the deponent knows and understands the contents of this affidavit, that the deponent has no objection to taking the prescribed oath, that the oath which the deponent has taken in respect thereof is binding on the deponent's conscience, and that the contents of this affidavit are both true and correct.





COMMISSIONER OF OATHS

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