

**IN THE EQUALITY COURT
(WESTERN CAPE DIVISION, CAPE TOWN)**



Case number: EC3/2016

In the matter between:

**SOCIAL JUSTICE COALITION
EQUAL EDUCATION
NYANGA COMMUNITY POLICING FORUM**

First Applicant
Second Applicant
Third Applicant

and

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

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae

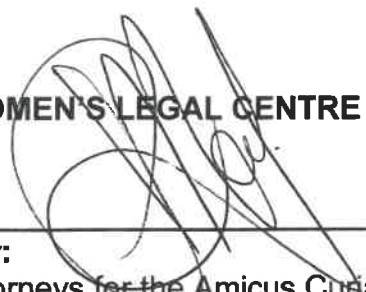
FILING SHEET

KINDLY TAKE NOTICE THAT the Women's Legal Centre (*Amicus Curiae*) herewith files the following documents:

1. Amicus Curiae Written Submissions

DATED AT CAPE TOWN THIS th 28 DAY OF SEPTEMBER 2017.

WOMEN'S LEGAL CENTRE


Per:
Attorneys for the Amicus Curiae
7th Floor Constitution House
124 Adderley Street
CAPE TOWN
8001
Tel: 021 424 5660
Fax: 021 424 5206

TO:
THE CLERK OF THE EQUALITY COURT
Western Cape High Court
Cape Town

AND TO:

LEGAL RESOURCES CENTRE
First and Third Applicant's Attorneys
3rd Floor, Greenmarket Place
54 Shortmarket Street
Cape Town
8001
Ref: Ms M Mudarikwa
Service by email



AND TO:

WEBBER WENTZEL
Second Applicant's Attorneys
15th Floor, Convention Tower
Heerengracht, Foreshore
Cape Town
Ref: Ms O Geldenhuys
Service by email

WEBBER WENTZEL

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28 SEP 2017

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AND TO:

Women's Legal Centre
Tel: 021 424 5660

THE MINISTER OF POLICE

First Respondent
C/o The State Attorney
22 Long Street
Cape Town
Service by email

STAATSPROKUREUR: KAAPSTAD
2017 -09- 28
STATE ATTORNEY: CAPE TOWN

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**AND TO:
NATIONAL COMMISSIONER OF POLICE**

Second Respondent
C/o The State Attorney
22 Long Street
Cape Town
Service by email

STAATSPROKUREUR: KAAPSTAD
2017 -09- 28
STATE ATTORNEY: CAPE TOWN

**AND TO:
WESTERN CAPE POLICE COMMISSIONER**

Third Respondent
C/o The State Attorney
22 Long Street
Cape Town
Service by email

STAATSPROKUREUR: KAAPSTAD
2017 -09- 28
STATE ATTORNEY: CAPE TOWN

**AND TO:
MINISTER OF COMMUNITY SAFETY, WESTERN CAPE**

Fourth Respondent
Fifth Floor
35 Wale Street
Cape Town
Ref: F Stuart
Service by email

MINISTRY OF
COMMUNITY SAFETY
28 SEP 2017
MINISTERIE VAN
GEMEENSKAPSVEILIGHEID

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**IN THE EQUALITY COURT
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In the matter between:

SOCIAL JUSTICE COALITION	First Applicant
EQUAL EDUCATION	Second Applicant
NYANGA COMMUNITY POLICING FORUM	Third Applicant

and

MINISTER OF POLICE	First Respondent
NATIONAL COMMISSIONER OF POLICE	Second Respondent
WESTERN CAPE POLICE COMMISSIONER	Third Respondent
MEC FOR COMMUNITY SAFETY, WESTERN CAPE	Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST	Amicus Curiae
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INTRODUCTION

1. The applicants have brought an application before this Honourable Court in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“**the Equality Act**”) principally to compel the South African Police Service (“**SAPS**”) to remedy the manner in which it allocates police officers to police stations.¹

2. The application was precipitated by a recommendation made by the Khayelitsha Commission of Enquiry into Allegations of Police Inefficiency and a Breakdown in Relations between the SAPS and the Community of Khayelitsha (“**the Khayelitsha Commission**”) in 2014 that the SAPS ought to revise its theoretical system for determining the

¹ Mlungwana at para 3; Record p 13.

allocation of human resources as a matter of urgency.² The recommendation followed a pronouncement by the Khayelitsha Commission that the residents of the poorest areas of Cape Town that bore the brunt of apartheid are still woefully under-policed twenty years into our new democracy and are often the police stations with the highest levels of serious contact crime. The Khayelitsha Commission noted that this pattern needs to change as a matter of urgency.³

3. Principally, the applicants are asking the court to order a review of the system employed by the SAPS to determine the allocation of police human resources on the basis that the effect of the current system is both irrational and discriminatory. This is borne out of the fact that residents in Black township communities, in the main, find themselves living in less safe environments, more at risk of crime, and their constitutional rights more at risk of being violated.⁴ Khayelitsha is such a Black township.

INTEREST OF THE AMICUS CURIAE IN THE MATTER

4. In its application to be admitted as amicus curiae in this matter, which application was not opposed by any of the parties, the Women's Legal Centre ("WLC") stated in an affidavit deposed to by its Director that its core objective is to advance and protect the human rights of all women

² Ibid at para 5.

³ Ibid at para 6.

⁴ Ibid at para 3.

and girls in South Africa, particularly women who suffer many intersecting forms of disadvantage. In doing so WLC seeks to contribute to efforts aimed at redressing the systemic discrimination and disadvantage that women face.⁵

5. The WLC was involved in the original complaint filed with the Premier of the Western Cape in 2011, and supplemented in 2012, calling for the establishment of a Commission of Enquiry into policing in Khayelitsha.⁶ In the supplementary complaint it was stated that:

5.1. “While the high levels of crime affect all community members, they particularly impact on children, girls, women, the elderly and groups vulnerable to hate crimes such as refugees, asylum seekers, immigrants, lesbian, gay, bisexual, transgender and intersex (LGBTI) people.”⁷

5.2. “Khayelitsha was the scene of the sexual assault and murder in December 2003 of 22 year old Lorna Mlofana by a group of young men who learnt that she was HIV positive. Lorna was a leader of the Treatment Action Campaign in her area. At that stage the community and civil society organisations began

⁵ Affidavit by Seeham Samaai at para 7.

⁶ Mlungwana at para 42; Record p 12.

⁷ Annexure to Mlungwana affidavit “PM5” (Supplement from Women’s Legal Centre to Complaint lodged in terms of Section 206(5)(a) and Section 66(2)(a) of the Constitution) at para 61; Record p 308.

calling upon the state to provide improved policing and services for rape victims.”⁸

6. The Khayelitsha Commission report deals, *inter alia*, with the evidence on demographics that was presented to the Commission by Professor Charles Simkins, “a leading South African demographer who served on the Statistics Council for a decade”.⁹ In his written report to the Khayelitsha Commission, which forms part of the Commission record and also part of these proceedings, Professor Simkins, who provided a socio-economic profile of Khayelitsha, stated under the heading of ‘distribution of the population by age and gender’, that in 2001 there were 92.6 males for every 100 females and in 2011, there were 95.7 males for every 100 females in Khayelitsha.¹⁰
7. Professor Simkins’s report and evidence were not contested. On his evidence, more than half the population of Khayelitsha is made up of women.
8. The WLC has recognised that this Court would not be able to consider this matter properly if it is not placed in a position to deal with the situation of a major segment of the population of Khayelitsha, the women, who bear the brunt, on a constant basis, of the ravages of crime in that area. There are accounts aplenty of how women, children

⁸ Ibid at para 62; Record p 308.

⁹ Khayelitsha Commission Report at p 35 para 20.

¹⁰ Report of Professor Charles Simkins p 13.

and the aged in Khayelitsha are exposed to and fall victim to crime, but perhaps their particular vulnerability is best illustrated by the background facts in the reported case of **Beja and Others v The Premier of the Western Cape and Others**¹¹. In that matter, which brought into sharp focus the perilous circumstances of some of the women Khayelitsha, the first applicant, an elderly 76-year-old-female, was attacked while using an unenclosed toilet provided by the City of Cape Town.

9. The impact of crime on the children of Khayelitsha must similarly be considered in the same vein as that of women.
10. These submissions are therefore made to assist this Honourable Court in deciding this matter, taking into account the role of *amicus* as enunciated in the case of *In Re: Certain Amicus Curiae Applications; Minister of Health and Others v Treatment Action Campaign and Others*,¹² namely that:

“The role of an amicus is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn... [A]n amicus has a special duty to the

¹¹ *Beja and Others v Premier of the Western Cape and Others* [2011] 3 All SA 401 (WCC); 2011 (10) BCLR 1077 (WCC) at para 140.

¹² 2002 (5) SA 713 (CC).

*court... to provide cogent and helpful submissions that assist the court.*¹³

THE STATE'S OBLIGATIONS

Constitutional obligations of the state

11. Section 7(2) of the Constitution imposes a duty on the state to *"respect, protect, promote and fulfil"* the rights in the Bill of Rights.¹⁴
12. Sexual violence implicates the following rights in the Bill of Rights:
 - 12.1. Section 9(1) and 9(2): *Everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms*
 - 12.2. Section 10: *Everyone has inherent dignity and the right to have their dignity respected and protected.*
 - 12.3. Section 11: *Everyone has the right to life.*
 - 12.4. Section 12(1)(c); *Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources and not to be treated or punished in a cruel, inhuman or degrading way.*
 - 12.5. Section 12(2)(b): *Everyone has the right to bodily and psychological integrity, which includes the right to security in and control over their body.*

¹³ 2002 (5) SA 713 (CC) para 5.

¹⁴ The Constitution of the Republic of South Africa 108 of 1996.

- 12.6. *Section 28: Every child has the right to be protected from maltreatment, neglect, abuse or degradation. A child's best interests are of paramount importance in every matter concerning the child.*
13. The state's duty under section 7 includes both the negative obligation to protect these rights, but also the positive obligation to take steps to respect, promote and fulfil the rights.¹⁵
- 13.1. In doing so, the state may initiate appropriate legislation and ensure effective enforcement;
- 13.2. The state's duty extends beyond its own action, and it must also take steps to protect these rights against damaging acts that may be perpetrated by private parties.¹⁶
14. There are several specific aspects of the state's duty that are now well-entrenched in our constitutional jurisprudence:
- 14.1. The state is obliged "*directly to protect the right of everyone to be free from private or domestic violence*";¹⁷
- 14.2. The state is obliged to "*take appropriate steps to reduce violence in public and private life*";¹⁸
- 14.3. The state is obliged in certain circumstances "*to provide appropriate protection to everyone through laws and structures designed to afford such protection*" which may imply "*a positive*

¹⁵ *S v Baloyi (Minister of Justice and Another Intervening) 2000 (2) SA 425 (CC) at para 11; Christian Education SA v Minister of Education 2000 (4) SA 757 (CC) at para 47; Carmichele v Minister of Safety and Security 2001(4) SA 938 (CC) at paras 44 to 45; Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA) at para 20.*

¹⁶ *Modderfontein Squatters, Greater Benoni City Council v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae) President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, Amici Curiae) 2004 (6) SA 40 (SCA) at para 27.*

¹⁷ *Baloyi 2000 at para 11.*

¹⁸ *Christian Education at para 47.*

*obligation on the authorities to take preventative operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.*¹⁹

15. The very high levels of sexual violence in South Africa are well documented and recognised by our courts. In **Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC)**²⁰ the Constitutional Court recognised that:

“sexual violence and the threat of sexual violence goes to the core of women’s subordination in society. It is the single greatest threat to the self-determination of South African women.”

16. In **Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies and Another, Amici Curiae) 2007 (5) SA 30 (CC)** Nkabinde J reiterated the widely accepted notion that:

*“sexual violence and rape not only offends the privacy and dignity of women but also reflects the unequal power relations between men and women in our society.”*²¹

17. Indeed, in **F v Minister of Safety & Security & another (Institute for Security Studies & others as amici curiae) [2012] JOL 28228 (CC)** at para 57 the Court stressed that:

“The threat of sexual violence to women is indeed as pernicious as sexual violence itself. It is said to go to the very core of the subordination of women in society. It entrenches

¹⁹ *Carmichele* at paras 44 to 45, citing with approval, *Osman v United Kingdom* 29 EHHR 245 at 305, para 115.

²⁰ *Carmichele* at para 62.

²¹ *Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies and Another, Amici Curiae)* 2007 (5) SA 30 (CC) at para 29.

patriarchy as it imperils the freedom and self-determination of women.”

Investigation of violence against women by the police is a constitutional obligation

18. Section 205 of the Constitution provides for the national police service, and requires national legislation to establish the powers and functions of that service. Section 203(5) provides that the objects of the police service is to prevent, combat and investigate crime, to maintain public order, to protect and secure inhabitants of the Republic and their property, and to uphold and enforce the law.
19. The court in **F v Minister of Safety & Security & another (Institute for Security Studies & others as amici curiae) 2012 (1) SA 538 (CC)** recognised that there is a constitutional duty on the police to prevent, combat and investigate crime and to protect the inhabitants of the Republic²².
20. With specific reference to violence against women and the constitutional duty of the police, the Constitutional Court expressed this duty in **K v Minister of Safety and Security 2005 (6) SA 419 (CC)** as follows:

²² para 138

Our Constitution mandates members of the police to protect members of the community and to prevent crime. It is an important mandate which should quite legitimately and reasonably result in the trust of the police by members of the community. Where such trust is established, the achievement of the tasks of the police will be facilitated. In determining whether the Minister is liable in these circumstances, courts must take account of the importance of the constitutional role entrusted to the police and the importance of nurturing the confidence and trust of the community in the police in order to ensure that their role is successfully performed.²³

21. In **Carmichele**²⁴ the Constitutional Court expressly noted that:

The police is one of the primary agencies of the State responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime.

22. This obligation and the principle that informs it is also recognized and enforced internationally. In the case of **C.A.S. and C.S. v. Romania, Application no. 26692/05**, the European Court of Human Rights

²³ para 52

²⁴ *Carmichele v Minister of Safety and Security* 2001(4) SA 938 (CC) para 62

considered the case of an applicant, a Romanian citizen, who alleged that the police and other state authorities had been ineffective in carrying out criminal investigations into alleged rape and other forms of abuse. Consequently, the applicant had sued the state for interference with his right to respect for his private and family life.

23. In para 70 of the judgment the court noted:

“For the investigation to be regarded as “effective”, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time. Consideration has been given to the opening of investigations, delays in taking statements and to the length

of time taken for the initial investigation (see Denis Vasilyev, cited above, § 100 with further references; and Stoica v. Romania, no. 42722/02, § 67, 4 March 2008).”

24. In Para 83 of the judgment the court noted:

“The failure to adequately respond to the allegations of child abuse in this case raises doubts as to the effectiveness of the system put in place by the State in accordance with its international obligations and leaves the criminal proceedings in the case devoid of meaning.”

25. In the result, the Court found that the applicant must have suffered hardship and distress because of the ineffective investigation and the interference with the normal course of his private and family life, and awarded damages against the state.

The international law obligations

26. The Constitutional Court has recognised South Africa’s international law duty to ensuring the enjoyment by women of fundamental rights and freedoms and to take reasonable and appropriate measures to prevent a violation of those rights.²⁵

Convention on the Elimination of All Forms of Discrimination Against Women

²⁵ *Baloyi* para 13; *Carmichele* at para 62; *Van Eeden v Minister of Safety and Security* 2003 (1) SA 389 (SCA) para 15.

27. South Africa is a signatory to a number of international human rights instruments, the most notable of which is the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).
28. CEDAW has been described as the definitive international legal instrument requiring respect for and observance of the human rights of women.²⁶ It is said to be “*universal in reach, comprehensive in scope and legally binding in character*”.²⁷
29. The South African Government ratified CEDAW on 15 December 1995 and is therefore bound by the obligations created by it.
30. CEDAW itself contains no less than six articles that indirectly relate to violence against women.²⁸ General Recommendation No. 19²⁹ explicitly states that the general prohibition of gender discrimination includes
- “gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately”*.³⁰
31. General Recommendation No. 19 further recommends that in order to fulfil their duties under the Convention, states must take all measures necessary to provide effective protection to women, including comprehensive legal, preventative and other measures.³¹

²⁶ Kathree F ‘Convention on the Elimination of all forms of discrimination against women’ *SAJHR* (1995) 421 at 421.

²⁷ Cook R ‘Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women’ (1990) 30 *Virginia Journal of International Law* 643 at 643.

²⁸ Articles 2,3,6,11,12 and 16.

²⁹ U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994).

³⁰ Para 6.

³¹ Para 24 (t).

32. The principles underpinning CEDAW are also evident in the preamble to the Universal Declaration of Human Rights and article 4(d) of the Declaration on the Elimination of Violence Against Women.³²

African Charter on the Rights of Women

33. The South African Government ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (**"the African Charter on the Rights of Women"**) on 17 December 2004.

34. Article 3 of the African Charter on the Rights of Women guarantees that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights and requires state parties to

"adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."

35. Article 4 states that "[e]very woman shall be entitled to respect for her life and the integrity and security of her person" and article 4(2) obliges the state to

"enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public".³³

36. In the event of violation of women's rights in this Protocol, Article 25 provides that parties:

³² U.N. GAOR, 48th Sess., art. 1 UN.doc. A/Res/ 48/104 (1994).

³³ Article 4 (a).

“undertake to provide for appropriate remedies to any woman whose rights or freedoms, have been violated and ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.”

SADC Protocol on Gender and Development

37. Part six of the SADC Protocol on Gender and Development³⁴ addresses gender based violence and it creates an obligation on state parties to enact and enforce legislation prohibiting all forms of gender based violence.³⁵

Domestic legislation

38. The preamble of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2017 recognises the prevalence of sexual offences in South Africa and the vulnerability of women and children in particular to these offences. It acknowledges South Africa's international and constitutional obligations, including the right to equality, the right to privacy, the right to dignity, the right to freedom and security of the person, which incorporates the right to be free from all forms of violence from either public or private sources, and the rights of children and other vulnerable persons to have their best interests considered of paramount importance. Section 2 of the Act

³⁴ South Africa has signed but not yet ratified the SADC Protocol on Gender and Development.

³⁵ Article 1 of SADC Protocol on Gender and Development.

commits to affording complainants of sexual offences the maximum and least traumatising protection that the law can provide.

39. The preamble to the Domestic Violence Act 116 of 1998 recognises domestic violence as a serious social evil, the high incidence of domestic violence in South Africa and that the victims of domestic violence are among the most vulnerable in society. The purpose of the Act is to afford victims of domestic violence the maximum protection from domestic abuse that the law can provide.
40. Of significance, both Acts seek to *“introduce measures which seek to enable the relevant organs of state to give full effect to the provisions of this Act”*. The legislation crafted specifically to address the high levels of violence against women in South Africa provide the legal obligations on the state to introduce measures, such as sufficient resources, to enable state organs like SAPS to implement these Acts.

South African Policy Framework to address crime

National Crime Prevention Strategy³⁶

41. The National Crime Prevention Strategy, which was adopted in 1996, came about due to the following conditions: high levels of violent crime leading to injury, loss of life, possessions and livelihood, resulting in the deprivation of citizens' rights and dignity, and in citizens experiencing the inhibiting consequences of crime and fear of crime.

42. Crime became a national priority because it threatened the rights and freedoms of citizens entrenched in the constitution. The strategy applied to all national departments that were able to contribute to the reduction of crime level. A shift was required in emphasis from reactive 'crime control' towards 'crime prevention'. It cited gender violence and crimes against children as being highly prevalent, and having a profoundly negative impact on the rights and well-being of women and children. It also cited the establishment of specialised police units to investigate crimes against children and the creation of victim aid centres offering interdisciplinary services, as interventions that were already in progress. The National Crime Prevention Strategy was developed from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which is based upon

³⁶ Josias paras 15-23

the philosophy that victims are entitled to access to mechanisms of justice, and to prompt redress for harm and loss suffered.

White Paper on Safety and Security³⁷

43. The Minister of Safety and Security noted that the focus of the White Paper on Safety and Security is limited to areas which will have maximum impact in improving the quality of service to the public. It advocates a dual approach to safety and security: effective and efficient law enforcement and the provision of crime prevention programmes. In order to ensure greater accountability for improved service delivery, the White Paper promotes policy formulation to remain the responsibility of government, and policy implementation to remain the responsibility of police. The institutional reform outlined in the White Paper requires the development of human resources.

Victim Empowerment Programme³⁸

44. The National Victim Empowerment Programme was adopted in 1999. It recognises the varying needs of victims of crime depending on who they are and the nature of the crime. Additionally, it recognises that the role of SAPS includes attending to the reporting and investigation of crime scenes, and the investigation of crime through Detective Services and other specialist units. A number of target groups are

³⁷ Josias para 24

³⁸ Josias paras 25-28

prioritised in terms of the programme, including victims of domestic violence, and victims of sexual assaults and rape. The National Policy Guidelines for Victim Empowerment places a number of duties upon SAPS, including professional and sensitive treatment of victims and witnesses, informing victims of their rights, taking statements in private, referral of victims to support systems, and providing victims with feedback regarding the status of their case.

Victims Charter³⁹

45. The Service Charter for Victims of Crime in South Africa (“the Victim’s Charter”) was adopted in 2004 and draws upon the spirit of the Constitution and the UN Declaration Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34). The Charter committed government to a victim-centred criminal justice process which eliminates secondary victimisation, and sets service standards to be accorded to victims, making provisions for recourse in cases where these standards are not met. The Charter includes seven rights of victims including: the right to receive information, the right to protection, and the right to be treated with fairness and respect for dignity and privacy.

Minimum Service Standard⁴⁰

³⁹ Josias paras 29-32

46. A Minimum Service Standard for Victims of Crime (2004) was adopted in order to define to what services victims were entitled in terms of the seven rights contained listed in the Victim's Charter. The Minimum Service Standard sets out the responsibilities of government departments including SAPS

Public Service Regulations on Human Resources:

47. Resolution 7 of 2002 of the Public Service Regulations requires every department (including SAPS) to develop a strategic plan, determine the organisational structure, define the posts necessary to perform its function, and develop a human resource plan. The human resource plan must include, among other things, post requirements and employee profiles. Every department must also develop an implementation plan which includes steps to implement its strategic and human resource plans, and time frames for the implementation of these plans⁴¹.

SAPS Commitments

48. The South African government has committed itself to address gender based violence, provide services and to allocate resources to achieve

⁴⁰ Josias paras 33-36

⁴¹ Josias para 46

these commitments through a variety of international obligations, domestic legislation, and government policies and programmes⁴².

Reporting Sexual Offences

49. According to the SAPS website, SAPS undertakes to provide specialised services to victims of sexual offences⁴³

Victim Empowerment Services in SAPS

50. In the 'Victim Empowerment Service in the SAPS' document⁴⁴, SAPS acknowledges that it is responsible for ensuring victims of crime, especially sexual offences and other serious and violent crimes, are provided with a victim-friendly service. SAPS describes victim-friendly service as service that protects the dignity and rights of victims, empowers victims, and ensures that they are not subjected to secondary victimization by inefficient members of the criminal justice system. The four elements of victim empowerment are listed as: emotional and practical support, providing information, and referral to professional support services

⁴² Josias para 37

⁴³ Josias para 40 https://www.saps.gov.za/services/report_sexual_offence.php

⁴⁴ Josias para 41 https://www.saps.gov.za/resource_centre/women_children/amended_victim_empo_service.pdf

National Instructions on Sexual Offences

51. The SAPS National Instruction 3/2008 on Sexual Offences were published in August 2008 in accordance with section 66(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007). The purpose of the National Instruction is to ensure that members of SAPS render a professional service to victims of sexual offences when investigating such offences. The National Instruction sets out the procedure to be followed by, and the obligations of, members of SAPS when handling sexual offences cases. These include: victim assistance, steps to be taken to safeguard a crime scene, execution of order for HIV testing of offender, preventing contamination of exhibits, taking in-depth statements from victims, and assisting victims during court proceedings⁴⁵

The National Policy Framework

52. The NPF Management of Sexual Offence Matters was first tabled in Parliament in June 2011, and the amended edition gazetted in June 2012. It was adopted in terms of section 62 of SORMA to ensure a uniform and coordinated approach by all government departments and institutions dealing with matters relating to sexual offences. Member departments of the Justice, Crime Prevention and Safety and Security

⁴⁵ Josias paras 43-45

Cluster participated in the drafting process, all represented on the Directors General Inter-sectoral Committee (DG ISC) which is responsible for the NPF. The DG ISC consists of the DG's of the DOJ&CD, the Department of Social Development (DSD), the Department of Health (DOH); the National Commissioners of Correctional Services (DCS) and the South African Police Services (SAPS); as well as the National Director of Prosecuting Authority (NPA). The Department of Women, Children and Persons with Disabilities (DWCPD), Department of Basic Education (DBE), Legal Aid of South Africa (Legal Aid South Africa) and National House of Traditional Leaders (NHTL) were later added to the committee.

53. Principle 3 of the NPF: Provision of Specialised Services to the Victims of Sexual Offences states that SORMA *"itself requires the introduction of "certain services to certain victims of sexual offences" which is read to mean "specialised services". Government departments have established specialized units, divisions or structures that are capacitated by specialist personnel and special resources to deal with sexual offences matters. Examples of these include specialized services offered by Clinical Forensic Medicine Centres (CFMC) in the DOH; Family, Child and Sexual Offences (FCS) Units within SAPS; Thuthuzela Care Centres (TCCs) established by the NPA; Court Preparation Officers provided by NPA; as well as the Sexual Offences*

*Courts that are capacitated with Witness Testifying Rooms, One-Way Mirrors, Anatomical Dolls and Intermediaries provided in courts*⁴⁶

54. In Chapter 2 of the NPF, a table sets out the detailed specific roles and responsibilities of the various role players. One of the responsibilities accepted by SAPS is to *'provide specialist services to victims'* and to *'improve the numerical establishment of the Dedicated Family, Child and Sexual Offences Family Violence, Child Protection (sic) and Sexual Offences (FCS) Units and personnel'*⁴⁷
55. The NPF is a clear indication of the commitment of SAPS to resource the policing of sexual offences. The acknowledgement of improving the numerical establishment of the FCS shows that the SAPS are aware of the lack of adequate resources and that they were intending to increase those resources at the time of the gazetting of the NPF.

Specialisation of Services for Victims of Sexual Offences – Draft Policy

56. This policy, while led by the Department of Justice and Constitutional Development, is the product of an inter-sectoral team, including SAPS. The policy recognises that the police play an essential role in the gathering of evidence in sexual offences matters, and that the investigation of matters determines whether a case will be prosecuted or not. It goes further in stating that there is evidence that specialised

⁴⁶ National Policy Framework Management of Sexual Offences Matters Amended 1st Edition June 2012 p18

⁴⁷ Ibid p33

units are more responsible and effective in dealing with cases of sexual violence and *'their establishment facilitates the development of expertise in the area which may result in an increase in the number of cases investigated....'*⁴⁸

57. The policy dictates the details of specialisation of services by special investigating units in SAPS. These include dedicated units for investigating sexual offences units, specialised training, victim-friendly facilities, effective resources to perform their functions, namely access to vehicles, computers, offices and telephones⁴⁹.
58. This policy is another indication of the knowledge and commitment of SAPS to the need of specialised SAPS units and the concomitant need to adequately resource them.

TESTING THE EFFICACY OF THE RESOURCE ALLOCATION SYSTEM

59. It is the WLC's submission that one of the appropriate ways to properly assess the efficacy of the allocation system of police resources in Khayelitsha is to adopt a two-step enquiry.

⁴⁸ Specialisation of Services for Victims of Sexual Offences – Draft Policy Department of Justice and Constitutional Development p5

⁴⁹ Ibid p10

FIRST ENQUIRY

60. The first step is to ask the question whether there are material inefficiencies in the provision of police services in Khayelitsha and, if so, the impact of those inefficiencies.
61. There is now a plethora of evidence pointing to poor policing in Khayelitsha.
62. The parts of Dr Josias's affidavit which summarise her evidence before the Khayelitsha Commission sketch a grim picture of the state of the FCS Unit in Khayelitsha,⁵⁰ namely:
- 62.1. Khayelitsha FCS Unit failed to attend monthly stakeholder implementation meetings.
- 62.2. Khayelitsha FCS Unit is poorly staffed and the investigating officers/police detectives employed there are terribly overworked.
- 62.3. Khayelitsha FCS Unit response times when called to attend to a case are poor.
- 62.4. Often telephone calls go unanswered by Khayelitsha FCS Unit members.
- 62.5. There is poor management of staff at Khayelitsha FCS Unit.

⁵⁰ Josias at para 66.1 -66.18.

- 62.6. The Khayelitsha FCS Unit detectives are burnt out due to a severe workload.
- 62.7. The work of the Khayelitsha FCS Unit detectives suffers as a result. They can't cope and end up taking too much sick leave.
- 62.8. This manifests in unprofessional and unacceptable behaviour in the manner in which the Khayelitsha FCS Unit detectives deal with Thuthuzela Care Unit staff, other stakeholders as well as victims of crime, the clients.
- 62.9. The community, particularly victims of sexual offences who are clients of the Khayelitsha Thuthuzela Care Centre, laid various complaints against members of the Khayelitsha FCS Unit. Some of the complaints were: failure to provide victims with a case number; failure to provide feedback about the case to victims; failure to provide case progress; failure to return victim's original birth certificate; failure to respond to victims who wanted to point out the suspect; failure to inform the victims that the suspect had been released on bail and had returned to the area where the victims lived; failure to provide forensic crime kits required to obtain samples for forensic testing; failure to collect J88 medical certificates; failure to attend appointment with a victims.

62.10. The situation was so bad that the above concerns were escalated to the Provincial level- to both the Head of the FCS Unit in the Western Cape Province as well as the Provincial Head of Detectives, to no avail. This was done by way of letter dated 21 May 2013, which was written on behalf of the Khayelitsha Thuthuzela Care Centre stakeholders. The contents of the letter were read into the record.

62.11. There was no change in service levels or staff compliment of the Khayelitsha FCS Unit even after the complaints lodged with the Provincial Heads.

62.12. Further efforts by way of follow up e-mails and telephone calls to the Provincial Heads and senior officers bore no fruit.

62.13. The SAPS failed to equip the Khayelitsha FCS Unit members with the tools for their work. Often the detectives were without cellular phone airtime, computers and e-mail.

62.14. When complaints were lodged about shortage of detectives, more management staff were appointed to the Khayelitsha FCS Unit. This was of course unhelpful as management do not deal with the everyday cases that needed to be attended to.

62.15. Khayelitsha FCS detectives had failed to submit Sexual Assault Evidence Kits to the SAPS Forensic Science Laboratory

containing samples of evidence collected from victims of sexual offences. Several Kits were found thrown away in a field near Delft. There was no explanation as to how police systems had failed to pick up that important DNA evidence had disappeared. The field where the thrown away samples were found is also a children's playground. Those children were exposed to serious danger if they had touched the kits. In the end the DNA evidence was destroyed and, consequently, the investigations were compromised.

62.16. A review of a sample of sexual offences cases that were withdrawn at Khayelitsha Court revealed that a significant number of cases had been withdrawn due to, *inter alia*, incomplete police investigations, outstanding DNA results and failure to bring police dockets to court.

62.17. Khayelitsha FCS Unit detectives were unable to detect the work of a serial killer even when they were alerted to it.⁵¹

63. We submit that the criticism of Dr Josias's credentials contained in Voskuil's answering affidavit is without merit. Dr Josias is the Head of the Thuthuzela Care Centre at Khayelitsha Hospital and her work clearly goes far beyond the scope of clinical medical doctor. She is a

⁵¹ Ibid, page 698 line 17 to page 706 line 25.

community worker who obviously has in-depth knowledge of Khayelitsha and works closely with the police and the courts in Khayelitsha. This comes across sharply in her evidence before the Khayelitsha Commission, particularly when she was under cross-examination by counsel for the SAPS. She is eminently qualified to testify on the matters contained in her affidavit before this Court. Further argument on this aspect will be presented at the hearing of this matter.

64. The rest of the record of the Khayelitsha Commission which is part of these proceedings is laden with community members' accounts of poor policing. The evidence is incontrovertible and overwhelming. Even the First, Second and Third Respondents do not dispute the damning evidence pointing to policing inefficiencies and its devastating effects on the community of Khayelitsha.⁵²
65. Their response is that the inefficiencies are not a result of inadequate allocation of resources, be it in the FCS Unit or in the other units of the SAPS.⁵³
66. Various people who live, work, and/or conduct business in Khayelitsha have told their personal stories of how vulnerable they are to crime, but most importantly, how they are overcome by a feeling of helplessness.

⁵² Voskuil answering affidavit in response to affidavit of Amicus Curiae at para 24, para 27.

⁵³ Ibid at paras 39 & 40.

They find themselves where they cannot do anything about the situation. This is their lived experience.

67. In the Khayelitsha Commission report is contained the results of an independent survey that was conducted into the attitudes of community members to policing in Khayelitsha (“the Mthente survey”). The Mthente survey was conducted face-to-face in transport hubs across Khayelitsha, and was followed by focus groups. The survey results showed that SAPS in Khayelitsha was rated negatively on the following range of survey items:

67.1. 62.6% of respondents disagreed with a statement that police in Khayelitsha are trained and able to fulfil their tasks;

67.2. 61.2% disagreed with the statement that police in Khayelitsha do what they are required to do;

67.3. 55.3% disagreed with the statement that police in Khayelitsha are polite; and

67.4. 56.4% disagreed with the statement that the police in Khayelitsha are efficient.⁵⁴

68. The constant refrain from the police in response to these experiences of the Khayelitsha community is that things will improve.

⁵⁴ Khayelitsha Commission report at p 133, para 10.

69. The fact is things have not improved over many years and are still not improving. This is the evidence of Dr Josias in her recent affidavit before this Court.⁵⁵ The WLC has prepared an application for the admission into these proceedings of an additional piece of evidence relevant in this regard. The evidence came to light only recently. The application will be brought on the date of the hearing of this matter. The parties will however be provided with the full papers at the time of the filing of these heads of argument, which is more than two months before the hearing. The parties will therefore have sufficient time to deal with the contents of the application, and this should not cause a delay of the proceedings or interrupt the time table that was made an order of court.
70. We submit there is overwhelming evidence for this Court to find, in answer to the first step of the enquiry, that the service rendered by the SAPS in Khayelitsha is inefficient and that the level of the inefficiency is serious and material. Clearly the SAPS lacks the capacity to deliver a proper service to the community of Khayelitsha.
71. The effects of the inefficiencies and incapacity are devastating to that community, particularly to its women and children.

⁵⁵ Josias affidavit at para 74.

72. By way of example, Professor D Kaminer and Dr D Harrison testified at the Khayelitsha Commission about the negative impact of violence and crime on children.⁵⁶ Their evidence was undisputed.

SECOND ENQUIRY

73. Once the Court concludes that there are indeed material inefficiencies in the manner in which the police operate in Khayelitsha, and notes the deleterious effects of those inefficiencies, despite the rigorous application of the Theoretical Human Resource Requirement (THRR) and Resource Allocation Guide (RAG), the second step of the enquiry involves an interrogation of the causes of the inefficiencies.

74. Part of the second step involves judging the quality of something after one has tried, used, or experienced it, in this case judging the efficacy of the THRR and RAG.

75. It is the case of the WLC that the current system (THRR and RAG) being used by SAPS to allocate human and other resources to Khayelitsha has over a long period and on a consistent basis yielded poor, unsatisfactory and inferior outcomes in the policing of violence against women and children. The gaps and defects of the current system as regards Khayelitsha are obvious, and they manifest in the inefficiencies that are traversed hereinabove and elsewhere.

⁵⁶ Ibid at p 134, paras 16-18.

76. The evidence shows that the current system (THRR and RAG) is particularly unable to take into account the needs of policing violence against women and children. Hence the current system, no matter its supposed virtues, is failing this significant and vulnerable group of society. The continued use of the THRR and RAG in its current form has a direct impact on the efficacy of the FCS Unit, and by implication is part of the cause of said inefficacy.

77. This is evident, *inter alia*, in the obviously poor and dysfunctional state of the FCS Unit. The evidence of Colonel Harri, the FCS Provincial Head is instructive. According to Col Harri:

77.1. The FCS Unit that was servicing Khayelitsha at the time was short staffed. There were not enough detectives for the work in the area.

77.2. Detectives at the Khayelitsha FCS Unit were overworked, suffered high stress levels and had a low morale.

77.3. In the period up to 2010 the Khayelitsha FCS Unit was staffed by detectives who had not undergone psychometric testing, which is one of the prerequisites for a post in an FCS Unit.

77.4. Col Harri could not explain properly, except in general terms, the training that had been provided to Khayelitsha FCS Unit members. She acknowledged that Khayelitsha FCS detectives

had poorly handled DNA kits and that there was a management failure to pick up that these kits were not accounted for in the police dockets.

- 77.5. There was a redeployment of officers away from the Khayelitsha FCS Unit, including of a detective who was performing well.
- 77.6. There was a lack of interest of new detective recruits who wanted to serve at the Khayelitsha FCS.
- 77.7. Previous inspections of the Khayelitsha FCS Unit had revealed many serious failures by the detectives, such as a failure to inform the victim of the arrest of a suspect; failure to inform the victim of the right to request that a suspect be tested for HIV and the various implications for such a request.
- 77.8. Task teams of detectives would from time to time have to be sent to the Khayelitsha FCS Unit to assist the detectives there with basic aspects of their dockets like following up on prosecutor queries; tracing suspects; and conducting other very routine type of work. These kinds of interventions were frequent and unique to Khayelitsha FCS Unit.
- 77.9. Many Khayelitsha FCS Unit case dockets had been withdrawn in Court due to failure by the detectives to conduct any

investigation and a failure by line managers to monitor and check the work of their juniors.

78. It is evident that there are still not sufficient and appropriate resources being allocated to the specialised Family Violence, Child Abuse and Sexual Offences Unit (FCS), as well as the provision of services for victims of domestic violence, needed to actively address these crimes. These are clearly the causes of the inefficiencies and incapacity.
79. There is thus a discernible gendered impact of inadequate resource allocation resulting in inefficient policing.
80. The Khayelitsha Commission identified inefficiencies in the policing (at station level and general detectives) of domestic violence at the three Khayelitsha police stations. The key reasons for the inefficiencies identified were the inadequate human resources allocated to the three police stations and the FCS Unit.⁵⁷
81. The South African government as a whole and the SAPS in particular have committed to addressing violence against women by being signatories to international treaties and instruments, as well as through the development of domestic legislation and polices. It is the case of WLC that the current and continued use of the system for allocation of resources in Khayelitsha and places like it results in the failure of SAPS to achieve the objectives and standards contained in legislation

⁵⁷ Khayelitsha Commission report p 391 para 153.

and policies the government has itself devised. The government is essentially not honouring its own commitments.

82. SAPS has indicated that the current system it uses to allocate resources is complex and makes use of a wide range of factors to determine the appropriate allocation of resources to various police stations and specialised units. WLC does not claim to be an expert in the development of the required system. However, it is submitted that the use of the current system results in the wholly inadequate and insufficient resourcing needed to effectively provide police services to women and children experiencing violence.

83. In particular, the FSC Unit in Khayelitsha is **currently chronically understaffed** which results in the services for victims being resources needed to police sexual offences, child abuse and domestic violence as well as a range of other gender related offences. For compromised on many levels. It is clear that the criteria used to determine allocation does not take into consideration the required example, using the criterion of the number of reported sexual offences to determine the number of members allocated to the FCS, this would not take into consideration the well documented phenomenon of underreporting of sexual offences. Using reported cases would lead to fewer allocated resources. This is just one example. The allocation of police resources to the policing of violence against women and children must take into account a varied range of factors which are specific to the nuances

and peculiarities of those crimes, and are different to the factors used to allocate resources to the policing of other crimes. More resources are needed to police offences such as rape and domestic violence, and the current system does not provide for them. Our courts have found that violence against women is, in and of itself, a barrier to equality; the use of the current system directly impacts on the levels of violence against women. This is a form of discrimination on the grounds of gender.

84. SAPS have committed to providing resources to address the high levels of violence against women through legislation and policies. In addition, SAPS have on numerous occasions in policies, reports to Parliament and in public acknowledged the need and roll out of FCS Units, as well as recognising the need to allocate appropriate resources to the Units for effective implementation. The evidence that has been placed before this court shows that in Khayelitsha adequate allocation of resources has not been made.

85. It was the evidence of General Lamoer, the Provincial Commissioner, at the Khayelitsha Commission that SAPS Provincial Commissioners around the country were dissatisfied with the allocation of human and other resources through RAG which is utilised by the SAPS. General Lamoer testified that the RAG allocation mechanism was not understood at "grass root level" by senior police management. According to him, "if you look at the Khayelitsha area, the broader

Khayelitsha area, yes, if we look at the staff establishment it's according to what the RAG is saying. But the circumstances within the area is different and that is what we're trying to put to them on a continuous basis. When I attended the national management forum and when this thing is being discussed, this is where we raise as provincial commissioners; it's not only myself but all provincial commissioners have an issue with the resource allocation guide because we believe that we need to have more people at the (coal) face of fighting crime. And that is the process that we are continuously doing.”⁵⁸

86. We submit that General Lamoer's observations and comments on the RAG are significant as they give a glimpse of how the resource allocation system is viewed even among senior police management, who are often constrained to speak their mind on such issues.
87. The only reasonable inference to be drawn from the about is that the resource allocation system that is currently being utilised by the SAPS does not suit or meet the needs of the community of Khayelitsha, particularly vulnerable groups in that community.

⁵⁸ Evidence of Lt General Lamoer before the Khayelitsha Commission p 6506 line 20 to p 6507 line 9.

**REPORT OF THE SPECIAL RAPPOREUR ON VIOLENCE AGAINST
WOMEN IN SOUTH AFRICA**⁵⁹

88. The vulnerable position of women in South Africa has also been recognised internationally. As recently as June 2016, the United Nations Special Rapporteur on Violence Against Women notes that the violence inherited from apartheid still resonates in South African society which remains dominated by deeply entrenched patriarchal norms and attitudes towards the role of women. This makes violence against women and children, especially in rural areas and in informal settlements, a way of life and an accepted social phenomenon.⁶⁰

Under reporting

89. In her report, the Special Rapporteur notes the phenomenon of under reporting of violence against women in South Africa. She states that current SAPS statistics, released annually, are in no way conclusive of the real prevalence of violence against women as it is 'an unchallenged fact that there is massive under reporting of all forms of gender based violence crimes'⁶¹. She refers to a number of studies

⁵⁹ A/HRC/32/42/Add.2 Human Rights Council, Thirty Second Session 14 June 2016

⁶⁰ 'Report of the Special Rapporteur on Violence Against Women, its causes and consequences on her mission to South Africa' UN A/HRC/32/42/Add.2 14 June 2016

⁶¹ *ibid* at p4

conducted which reveal this trend⁶², one of which found that more than half of the women participating in the study had experienced gender based violence. She also notes that the Medical Research Council has estimated that one in nine rapes are reported to the police⁶³, and in a 2010 study in Gauteng conducted by Gender Links, only 1 in 13 raped by a non-partner reported the matter to the police, and only 1 in 25 raped by their partners reported the offence to the police⁶⁴. In its OPTIMUS study on crimes and abuses, the University of Cape Town showed that 1 out of 5 children report being abused by the age of 17 years, a likely underestimation⁶⁵.

90. The Special Rapporteur recognised the many societal and institutional barriers to under reporting of violence against women and girl children. Factors such as self-blame, fear of reprisals, knowing the perpetrator, fear of stigmatisation, lack of support from family and communities. She also acknowledged that many victims lack easy access to police stations⁶⁶.
91. The issue of underreporting of sexual violence related cases and underreporting in general was dealt with during the Khayelitsha Commission proceedings. Dr C De Kock, Independent Consultant and

⁶² <http://www.mrc.ac.za/gender/gbvthewar.pdf>.

⁶³ R Jewkes and N abrahams, The epidemiology of rape and sexual coercion in South africa: an overview, *Social Science and Medicine*, 55:7, 2002, 1231–1244.

⁶⁴ M. Machisa et al, The War at home. GBV indicator projects, Gender links,2010.

⁶⁵ 2015 University of Cape Town OPTIMUS Study.

⁶⁶ Ibid 'Report of the Special Rapporteur on Violence Against Women at p 16.

Analyst: Crime, Violence and Crowd Behaviour, submitted a report to the Khayelitsha Commission and testified. When dealing with underreporting he stated in his report that,

“there is a whole range of factors which determine reporting behaviour including: public perceptions of and trust in the police; the current socio-economic situation; gender equality; family pressure etc.”⁶⁷

92. Dr De Kock went on to state the following:

“The Mthente research report also identified significantly different underreporting levels for the three precincts which make up Greater Khayelitsha. For example, for common robbery the under-reporting levels for Harare is 52.5%, Khayelitsha is 36.7%, and for Lingeletu West 20.0%. But then for a related but more serious crime, namely armed robbery, the underreporting for Harare is 32.5% and for Khayelitsha it is 48.2%. This illustrates the point made above that it makes the task of the crime analyst very complex and difficult.”⁶⁸

⁶⁷ Is Crime Combating Intelligence led and is it effective in Greater Khayelitsha, Dr. Chris Paul De Kock at para 70 p 39.

⁶⁸ Is Crime Combating Intelligence led and is it effective in Greater Khayelitsha, Dr. Chris Paul De Kock at para 71 p 39.

Gaps and Challenges

93. In relation to the policing of violence against women, the Special Rapporteur identified the poor quality of investigations due to the lack of availability of qualified investigators, including the FCS units⁶⁹
94. She also found that there has been a chronic shortage of budgeting resources for the implementation of the Domestic Violence Act – this represents a human rights violation by the state⁷⁰

Conclusions and Recommendations

95. The Special Rapporteur found that South Africa has failed to give full effect to the principle of substantive gender equality and the prohibition of direct and indirect discrimination against women; this is in spite of the Constitution, solid legislation and policies which deal with gender based violence. She holds that gender based violence continues to be pervasive and a systemic women human rights violation⁷¹.
96. She recommends:
- 96.1. the urgent provision of adequate budgets for the implementation of key measures in relation to the Domestic Violence Act.⁷²

⁶⁹ Report of the Special Rapporteur on Violence Against Women at p at p18.

⁷⁰ Ibid.

⁷¹ Ibid at p19

⁷² Ibid at p20

96.2. that the criminal justice system has the capacity – human resources, skills, expertise and funding – to deal efficiently and effectively with gender based violence. Appropriate budget allocation must be made to roll out, amongst other services, the FCS units, in particular in rural and informal settlements.⁷³

96.3. with reference to national mechanisms, that adequate resources are allocated for state institutions to carry out their mandates with respect to gender equality and violence against women.⁷⁴

THE PROMOTION OF EQUALITY AND PREVENTION OF DISCRIMINATION ACT 4 OF 2000

97. It is the case of WLC that the current system used by SAPS to allocate police resources results in unfair discrimination against women on the ground of gender in terms of section 8(a) of the Equality Act.

98. The relevant part of section 8 reads as follows:

Prohibition of unfair discrimination of the ground of gender

Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including-

⁷³ Ibid

⁷⁴ Ibis at p21

(a) gender based violence

99. Discrimination is defined in section 1 of 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 of the prohibited grounds

100. It is submitted, that based on the evidence placed before this court (refer to all the evidence in Harri, Harmse and Josias' affidavit about the FCS in Khayelitsha;), that the allocation of resources to the FCS unit in Khayelitsha is inadequate for the unit to effectively fulfil its mandate.

101. This inadequate allocation of resources results in discrimination in that women, who are disproportionately subjected to high sexual and domestic violence, through the practice of a system that allocates police resources to FCS units, are deprived of benefits, opportunities and advantages that they would otherwise have enjoyed.

102. It is submitted that if the system used by SAPS to allocate resources took into consideration the specific needs of policing violence against women, this would result in appropriate allocation of budget to the FCS

units; more posts would be made available and the posts would be filled. The current system leaves the FCS unit dysfunctional as its members are overworked due to a lack of human resources. Women victims of sexual and domestic violence experience the impact of this under-resourcing. This is because women are in the majority (as opposed to men) as victims of these types of offences due to their specific vulnerability.

CONCLUSION

103. The evidence before this Court establishes, beyond doubt, that there are material police inefficiencies in Khayelitsha. The negative impact of those inefficiencies on the Khayelitsha community, particularly women and children, is manifold, serious and of a significant degree. The causes of the inefficiencies are a resource allocation system that is defective and poorly suited for that community.
104. The situation has gone on for far too long without being addressed properly. The THRR and RAG systems of allocation of police resources in Khayelitsha are clearly not working and ill-suited for Khayelitsha, no matter how efficiently they are being applied.
105. We submit there is sufficient evidence militating that this Court should declare the system employed by the South African Police Service to determine the allocation of police human resources to be irrational.

106. We support the relief prayed for by the Applicants in the notice of motion.

TS SIDAKI

B PITHEY

Counsel for the Amicus Curiae
Chambers, Cape Town
28 September 2017

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