



**REPORT ON THE INVESTIGATION INTO
WESTERN CAPE SAPS PERSONNEL
PRACTICES AND SHORTAGES**

JUNE 2018

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GLOSSARY OF TERMS

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|------|--|
| AENE | Adjusted Estimates of National Expenditure |
| ENE | Estimates of National Expenditure |
| MPP | Member of Provincial Parliament |
| MTEF | Medium Term Expenditure Framework |
| PSC | Public Service Commission |
| RAG | Resources Allocation Guide |
| SAPS | South African Police Service |
| THRR | Theoretical Human Resource Requirements |

LIST OF TAGS

| Document | Tag |
|--|-----|
| Letter dated 28 August 2017 from Ms M Wenger | A1 |
| Letter dated 07 August 2017 from the Acting National Commissioner | A2 |
| Letter dated 12 October 2017 from the PSC Provincial Commissioner: Western Cape | A3 |
| Letter dated 15 November 2017 addressed to Ms Wenger | A4 |
| Letter dated 15 November 2017 addressed to the Minister of Police | A5 |
| E-mail dated 30 January 2018 from Colonel T Dewkie | A6 |
| E-mail dated 07 February 2018 | A7 |
| Letter dated 29 March 2018 | A8 |
| E-mail dated 17 April 2018 | A9 |
| Reminder dated 03 May 2018 | A10 |
| E-mail dated 04 May 2018 | A11 |
| Letter dated 26 April 2018 from Ms M Wenger | A12 |
| E-mail dated 29 May 2018 from Ms M Wenger | A13 |
| Letter dated 24 May 2018 from Ms M Wenger | A14 |
| Parliamentary Question: Statistics of police-to-population ratio | A15 |
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| <i>"Provincial Policing Needs and Priorities (PNP) Report for the Western Cape 2015/16"</i> | F |
| <i>"Analysis of Human Resource Allocation for South African Police Service with specific reference to the Western Cape"</i> | G |
| Adjusted Estimates of National Expenditure | I |
| Estimates of National Expenditure: 2018 | I1 |
| SAPS Annual Performance Plan for the 2017/18 fy | J |
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A BACKGROUND TO THE INVESTIGATION

1. In a letter dated 28 August 2017 (Tag A1), Ms M Wenger, MPP, Chairperson of the Standing Committee on Community Safety, Western Cape Provincial Parliament, requested the Public Service Commission (PSC) to investigate the under-resourcing of human resources of the South African Police Service (SAPS) within the Western Cape Province.
2. Ms Wenger provided the following background information to the request for an investigation into the under-resourcing of human resources at the SAPS:
 - 2.1 The Standing Committee had embarked on a series of public hearings on this matter and made some concerning findings. Some of the concerns, are the following:
 - (a) It was established in 2013 that the Western Cape Province had a shortage of 1012 police officers, in comparison with the next highest province, i.e Gauteng with 748 officers.
 - (b) The Western Cape had 128 understaffed police stations, which means that 85% of police stations were understaffed.
 - (c) In 2014, the Western Cape had 2392 vacancies. This may be compounded by the number of officers leaving the SAPS.
 - (d) The SAPS recruitment rate is insufficient to meet replacement levels, which has a negative effect on addressing under-resourcing.
 - (e) The police-to-population ratio for the Cape Town metropolitan area is significantly below the national average. For Cape Town it is 1:439 people. 21 police stations in Cape Town have less than 1 officer for every 500 residents. These are almost exclusively high crime communities.
 - (f) In the Cape Town Metropolitan Area, all police stations, with the exception of Claremont, have detective to dockets ratios in excess of the national norm of 1:25 dockets.
 - (g) The Maitland K9 Unit is equipped with more than 150 kennels, but there are only 51 dogs. The dogs are often overworked and require more rest intervals to ensure they perform optimally.
 - (h) The disbandment of specialist units, including a reduction in Public Order Policing numbers, has placed a burden on officers at station level.
 - (i) Under-resourcing of staff has a detrimental effect on staff morale and personal health.
 - (j) The lack of visible policing (VISPOL) officers leave health care workers exposed to potentially volatile gang activity. It also impacts negatively on the management of taxi violence and the dangers faced by learners and educators in high crime communities.
 - 2.2 The Committee had invited the National Police Commissioner to brief them on measures that would be taken to remedy the situation. The Committee was informed that the province was allocated 759 officials less than in 2013. The fixed

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establishment has decreased from 22 633 posts in 2013 to 20 969 posts in 2017/18. Furthermore, the latest police budget tabled in parliament, shows the intention of Department to decrease the number of posts nationally from 194 431 posts to 191 431 posts by 2019/20. In addition, the number of reservists has declined by 66% since 2008.

- 2.3 The Committee expressed their dissatisfaction with the response received from the Office of the National Commissioner as the Committee was of the opinion that the problem of under-resourcing was not adequately addressed, and wrote to the National Commissioner to request that the under-resourcing be adequately addressed. The Committee was informed that there will be no anticipated budget allocation increase for compensation of employees over the medium term and that budgetary and policy constraints prevents the SAPS from filling posts. This is concerning to the Committee as the SAPS is set to receive an additional R12 billion over the medium term in terms of the National Treasury Revised Expenditure for 2017. This would imply that other items are taking preference over personnel and calls into question SAPS personnel practices and priorities.
3. Attached to Ms Wenger's letter, is a letter dated 07 August 2017 (Tag A2) from the Acting National Commissioner, which indicates the following:
- (a) The Committee was provided with the theory underlying the determination and allocation of the SAPS' fixed establishment. The SAPS does not envisage that the budget allocation to the Department, specifically the compensation budget allocation, would be increased over the medium-term. SAPS was in the process of engaging National Treasury in an effort to ensure that the budget allocation to the Department is maintained over the medium term and to ensure an increase in the budget allocation to the Department.
- (b) The Committee was informed that the police resourcing shortages experienced by the Western Cape Province is not unique to the Province, but are experienced by all provinces and national capabilities. The SAPS was in the process of analysing current staffing levels or certain national capabilities in an effort to rationalise and streamline these capabilities, potentially creating additional funded posts for distribution to station level.
4. In a letter dated 12 October 2017 (Tag A3), the Provincial Commissioner: Western Cape from the PSC, informed Ms Wenger that her request for an investigation would be forwarded to the Chairperson of the PSC for further attention. In a letter dated 15 November 2017 (Tag A4), the Cluster Commissioner responsible for SAPS, Dr TB Luthuli, informed Ms Wenger that the PSC had decided to investigate the SAPS resource allocations to the Western Cape Province in line with its constitutional mandate. The Minister for Police was informed in a letter dated 15 November 2017 (Tag A5), of the request by the Committee for an investigation into the resource allocations to the Western Cape Province.

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5. On 07 December 2017, Ms Pool from the Office of the PSC met with Colonel Teresa Dewkie employed in the Unit: Organisational Design: Frontline Services. She indicated that the issue around the allocation of police officers to police stations, was served at the Equality Court (High Court). Colonel Dewkie in an e-mail dated 30 January 2018 (Tag A6), provided the following explanation of the allocation of human resources in terms of the Theoretical Human Resource Requirements (THRR):
- a) The first stage in the allocation of human resources to police stations is the theoretical determination of the resources needed by each station. This determination does not take into account available resources. It simply asks how many policemen and policewomen will be needed to perform all the tasks that each station is required to perform. The THRR is a technology based model for determining the minimum number and level of posts for police stations given the minimum standard and allocates resources on a racially neutral basis.
 - b) The determination is calculated at national level and is largely intended to-
 - determine the allocation of resources between provinces; and
 - provide a guide to Provincial Commissioners on how to distribute their resources. It was not meant to be an absolute determination of the distribution of resources, which would remain in the Provincial Commissioner's discretion based priorities.
 - c) 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 functions. For example:
 - (i) 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.
 - (ii) Visible policing is determined primarily by reported crime rates and population.
 - (iii) 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.
 - (iv) The number of police required to staff a Community Service Centre is determined by the number of documents certified, cases registered, accidents dealt with, etc.
 - d) The determination of the THRR depends on information supplied by each station to the national office in Pretoria. The THRR is also meant to give effect to policy

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decisions taken by SAPS. If SAPS determines that all stations must be open 24 hours a day, the expected burden of those requirements needs to be worked into the calculation.

- e) 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. However, as a result of budgetary constraints, not all the posts determined in terms of the THRR are allocated to the SAPS. In respect of police stations, only 68% of the posts determined in terms of the THRR, are assigned to police stations.
 - f) The reduction from the 100% THRR determination to the 68% actual allocation is meant to happen in two stages:
 - (i) 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;
 - (ii) The Provincial Commissioners are then meant to distribute the allocated resources amongst the stations to give effect to their province's priorities. However, the Provincial Commissioner's powers are limited in that –
 - the command structure created by the THRR is of a generic, fixed nature and any allocation which deviates from this overall structure would constitute irregular expenditure;
 - it is not possible to fund a police station at a higher level than its grading in terms of the THRR; and
 - the THRR grading of posts and span of control cannot be exceeded.
6. In order to obtain input from the Western Cape Provincial Commissioner on the methodology used in the allocation of resources to police stations based on the fixed establishment, a request was forwarded to the Western Cape Provincial Office of SAPS on 07 February 2018 (Tag A7). The Western Cape Provincial Office forwarded the request for information to the National Commissioner's Office, without providing any information to the PSC. Several attempts to obtain a response have been without success.
7. The draft Report without recommendations was forwarded to the Minister of Police and Ms Wenger for their comments/inputs on 29 March 2018 (Tag A8). In an e-mail dated 17 April 2018 (Tag A9), Ms Wenger acknowledged receipt of the draft Report and indicated that she would provide her comments to the PSC. Reminders were forwarded to both the Minister and Ms Wenger on 03 May 2018 (Tag A10). In an e-mail dated 04 May 2018 (Tag A11), Ms Wenger forwarded her comments dated 26 April 2018 (Tag A12), to the PSC for consideration. The following is a synopsis of Ms Wenger's comments:

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- (i) The request for the investigation lies principally with the under-resourcing and shortage of SAPS personnel in the Western Cape Province, and not only on how the limited resources are allocated.
- (ii) The gap between the fixed establishment and actual establishment, is the largest in the Western Cape Province. There is a real problem of under-resourcing to cover, among others, visible policing, detectives, community service centres and domestic violence. This is exacerbated by the high turn-over and the decline in the number of reservists.
- (iii) Based on several examples mentioned by Ms Wenger, she stresses that the PSC's investigation into the broader resource strategies is crucial. According to Ms Wenger, resources may not be equitably allocated, but the question is where there are sufficient resources to allocate generally and to what extent there are available resources to re-allocate to ensure viable policing outcome.
- (iv) The budget for SAPS is increasing whereas the personnel numbers are decreasing. National Treasury Estimates of National Expenditure for the SAPS reflects that the budget for SAPS is set to increase by R11.9 billion over the MTEF period, which is the same period over which the personnel numbers are set to decrease from 194 431 to 191 431.

8. In a follow-up e-mail dated 29 May 2018 (Tag A13), Ms Wenger forwarded a letter dated 24 May 2018 (Tag A14) in which she submits additional information, to the PSC. Ms Wenger also attached statistics of the ratio police to population per station for 2016 and 2018 (Tag A15). According to Ms Wenger, the police to population ration in the Western Cape regressed since 2016. For 2016, the ratio was 1:385 whereas the ratio is 1:509 in 2018. In respect of the metropolitan area of the City of Cape Town, the ratio was 1:439 whereas the ratio is currently 1:560.

B. MANDATE AND POWERS OF THE PSC

9. The PSC's mandate and powers are based on the basic values and principles governing public administration provided for in section 195 read with section 196 of the *Constitution of the Republic of South Africa, 1996* (the Constitution). Section 196(4)(b) of the Constitution, 1996, determines that the powers and function of the PSC are to "investigate, monitor and evaluate the organisation and administration, and the personnel practices, of the public service".

C. REGULATORY FRAMEWORK

10. The following legislative framework applies to SAPS:

- 10.1 Sections 205 to 208 of the *Constitution, 1996*, governs the mandate of the police.
- a) Section 205 determines that –

“(1) *The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.*

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- (2) *National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.*
 - (3) *The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."*
- b) Section 207 determines that –
- "(1)"
 - (2) *The National Commissioner must exercise control over and manage the police service in accordance with the national policing policy and the directions of the Cabinet member responsible for policing.*
 - (3) *The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.*
 - (4) *The provincial commissioners are responsible for policing in their respective provinces–*
 - (a) *as prescribed by national legislation; and*
 - (b) *subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).*
 - (5) *The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.*
 - (6)"

10.2 Sections 11 and 12 of the *South African Police Services Act, 1995* (Act 68 of 1995) (SAPS Act) provide for the authority of the National and Provincial Commissioners.

- a) Section 11 determines that -
 - "(1) *The National Commissioner shall exercise control over and manage the police service in accordance with section 207(2) of the Constitution of the Republic of South Africa, 1996.*
 - (2) *Without derogating from the generality of subsection (1), the National Commissioner shall-*

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- (a) *develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;*
- (b) *determine the fixed establishment of the Service and the number and grading of posts;*
- (c) *determine the distribution of the numerical strength of the Service after consultation with the board;*
- (d) *organise or reorganise the Service at national level into various components, units of groups;*
- (e) *establish and maintain training institutions or centres for the training of students and other members;*
- (f) *establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the general management, control and maintenance of the Service; and*
- (g) *perform any legal act in a legal capacity on behalf of the Service."*

b) Section 12 determines that -

"(1) Subject to this Act, a Provincial Commissioner shall have command of and control over the Service under his or her jurisdiction in the province and may exercise the powers and shall perform the duties and functions necessary to give effect to section 219 of the Constitution.

(2) A Provincial Commissioner may –

- (a) Subject to a determination under section 11(2)(b), delimit any area in the province and determine the boundaries thereof until the province has been divided into a many areas as may be necessary for the purposes of the Service under his or her jurisdiction; and*
- (b) Establish and maintain police stations and units in the province and determine the boundaries of station or unit areas.*

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

10.3 Regulation 20(2) of the SAPS Employment Regulations, 2017 determines that -

- "(2) Based on the strategic plan of the Service, the National Commissioner must with the concurrence of the Minister-*
 - (a) determine the organisational structure of the Service in terms of its core and support functions;*
 - (b) define the posts necessary to perform the relevant functions while remaining within the current budget and medium-term expenditure*

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- framework of the Service, and the posts so defined, constitute the fixed establishment of the Service;*
- (c) *grade proposed new jobs or newly defined jobs according to the job evaluation system referred to in regulation 29 except where the grade of a job has been determined in terms of an OSD; and*
 - (d) *engage in human resource planning in accordance with regulation 21 with a view to meeting the resulting human resource needs."*

D ADDITIONAL REPORTS/INFORMATION

11. The following literature/reports provide information on the resource allocation in SAPS:

- 11.1 *Calculation of Theoretical Human Resources Requirements Clusters, Police Stations, Satellite Police Stations and Contact Point (Tag B).* The SAPS adopted an in-house information technology-based solution to the determination of the number and level of posts for police stations and clusters, referred to as the Resources Allocation Guide (RAG). It is also used in the Medium Term Expenditure Framework (MTEF) to determine the budgetary requirements for clusters and police stations. The system includes arithmetic means, weighted averages, ratio analyses, standard times, time percentages and time estimates of specific elements of tasks/activities performed at clusters and police stations and is referred to as the "ideal" situation. Posts are made available in terms of the MTEF in line with the budget allocation to SAPS and is less than the "ideal" requirement for clusters and police stations.
- 11.2 The PSC published a *Consolidated Report on Inspections of Detective Services: Department of Police* in September 2011 (Tag C). The Report considered amongst others, the Detective docket allocations ratio at the time in the Central Cape Town, Kraaifontein and Khayelitsha police stations. It was found that the docket allocation ratio exceeded the national norm of 1:15-25, in fact, at the Khayelitsha police station, the ratio was 1:132. The Report found that the statistics held at the police stations relating to the number of detectives, were not the same as that held at National Office. This means that the budget and resource allocations such as vehicles and computers are impacted negatively.
- 11.3 *Report of the Commission of Inquiry into Allegations of Police Inefficiency and a Breakdown in Relations between SAPS and the Community of Khayelitsha*, August 2014 (Tag D). The Premier of the Western Cape appointed the Commission of Inquiry in August 2012 in response to a complaint she received from a group of non-governmental organisations and amongst others, the Social Justice Coalition and Equal Education, who alleged that there were "widespread inefficiencies, apathy, incompetence and systemic failures of policing" in Khayelitsha. The Commission collated a substantial report of 503 pages based on documentary records and statements from several stakeholders, including SAPS, the complainant organisations and the Department of Community Safety in the Western Cape. The issues considered by the Commission included, amongst

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others, staffing of the three police stations in Khayelitsha and the SAPS methodology for allocating human resources to police stations. A wide range of inefficiencies was identified by the Commission including allocation of resources to ensure proper policing in Khayelitsha. A number of recommendations were made as well, including the review of the SAPS mechanism for determining human resource allocation (THRR) to be initiated by the National Commissioner immediately. It was recommended that the allocation system that is adopted, should be published in the SAPS Annual Report and be available to key oversight agencies, including Parliament, the Civilian Secretariat and provinces.

- 11.4 An article by Jean Redpath and Fairouz Nagia-Luddy "*Unconscionable and irrational*" published in SA Crime Quarterly No 53 of September 2015 (Tag E), looks at the findings of the Khayelitsha Commission Report, specifically in relation to SAPS human resource allocation. The article highlighted the fact that the Commission heard evidence that a lack of human resources was at least partly to blame for inadequate service delivery by the police. The authors of the article advocate for the review of the SAPS mechanism for determining human resource allocation, with special emphasis on the equitable distribution of experienced personnel with specialist skills in the investigation of serious contact crimes.
- 11.5 The Western Cape Provincial Parliament's Standing Committee on Community Safety, hosted public hearings during 2015 to understand police resourcing challenges in the Western Cape and address the impact that the lack of police resources might have on communities. The findings of the Standing Committee are summarised in paragraph 2.1 above.
- 11.6 In a Report titled "*Provincial Policing Needs and Priorities (PNP) Report for the Western Cape 2015/16*" by the Department of Community Safety (Tag F), the shortage of SAPS officials in the Western Cape is raised as an ongoing concern. According to the Report, the approved fixed establishment for the Province was 22 038 as at 31 March 2015. However, only 20 604 posts were filled, meaning that the SAPS in the Province was only 93.5% capacitated. This is less than the target of increasing staffing levels to 98% for the 2015/16 financial year. According to the Report, SAPS noted the gap between the optimal number of posts determined in terms of the THRR and the number of posts on the fixed establishment, which continues to widen due to the fact that no additional posts are allocated on the fixed establishment.
- 11.7 In March 2017, the Department of Community Safety: Western Cape Government, published an *Analysis of Human Resource Allocation for South African Police Service with specific reference to the Western Cape* (Tag G). The study provides an analysis of the allocation of human and vehicle resources at six selected police stations in the Western Cape Province, namely Paarl East, Mfuleni, Manenberg, Nyanga, Prince Alfred, Hamlet and Kleinmond.

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According to the study, none of the 6 police stations covered in the analysis had intimate knowledge of the THRR, nor had actual involvement in determining the resource requirements for the police station. The study indicates that although the allocations in terms of the THRR in respect of all the stations increased in 2015/16, the allocation of the fixed establishment for the police stations was however, not directly proportionate to the THRR. The analysis further reflected that the stations were actually under resourced for the five years counting from 2011/12 to 2015/16, for example, the Nyanga police station is a priority station in the province and counts among the 30 priority police stations in terms of violent crime. It is known as the precinct with the highest number of murders in the country. The THRR allocation for the Nyanga police station shows an increase of 16.2% from 413 human resources in 2012/13 to 480 in 2015/16. The fixed establishment increased by 33% (81) for the same period. However, the actual allocation stabilised at 0.7% from 292 human resources in 2012/13 to 294 in 2015/16.

The analysis finds that the results of the THRR are not shared with each police station, only the granted fixed establishment, which is largely driven by budget constraints. The allocation or shifting of resources at provincial level, appears to be at the discretion of management. However, it should be noted that this was not proven. Furthermore, the THRR and the input sheet do not always account accurately for the peculiarity of each police station. It falls short in that it does not provide for specifics such as the size and nature of particular gangs, gang activities and incidents.

- 11.8 In terms of National Treasury's *"Guidelines for costing and budgeting for compensation of employees"* (Tag H), all departments are expected to adhere to the set compensation baseline ceilings approved by Cabinet on 13 January 2016. The compensation baseline was reduced by R10 billion in 2017/18 and R15 billion in 2018/19. The reduction was spread across all national and provincial departments, with a larger portion of the reduction made to national votes. Further reductions amounting to R471 million in 2018/19 and R497 million in 2019/20 were effected on national level.
- 11.9 All departments submit in detail their planned spending for the Medium Term Expenditure Framework (MTEF) which is published by National Treasury in the Estimates of National Expenditure (ENE) publication. During the financial year, a revision of spending and departmental revenue projects from the financial year, is provided by National Treasury in the Adjusted Estimates of National Expenditure (AENE). This process includes revised spending and departmental revenue projections for the current financial year, and any revisions to performance projections emanating from the technical financial amendments tabled in the AENE, if that be the case. According to the AENE for the 2017/18 financial year (Tag I), adjustments to vote appropriations amounts in respect of some votes, were made to the amount of R14 498 734. Scrutiny of Table 2 titled *"Adjusted appropriations per vote and adjusted estimates of direct charges against the National Revenue Fund"*, indicates that the main appropriation in respect of the

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SAPS is reflected as R87 025 128 which were decreased to R86 761 128 in terms of the adjusted appropriation.

- 11.10 According to "Table 2 Expenditure by national vote: 2014/15 to 2020/21", of the Estimates of National Expenditure, 2018 (Tag I1), the expenditure for SAPS for the MTEF is reflected as follows:

| 2017/18 (R million) | 2018/19 (R million) | 2019/20 (R million) | 2020/21 (R million) |
|------------------------|------------------------|------------------------|------------------------|
| 86 761 | 91 834 | 98 170 | 104 901 |

Table 9 of the Estimates of National Expenditure, 2018, reflects the following in respect of personnel numbers in respect of the SAPS:

| 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---------|---------|---------|---------|
| 193 431 | 192 431 | 191 431 | 191 431 |

The Expenditure Analysis of SAPS as set out in the 2018 Appropriation Bill indicates the following:

"As policing is labour intensive, 77.4 percent (R229 billion) of the department's budget over the MTEF period is allocated to compensation of employees, which is the largest cost driver across all programmes. The department has a funded establishment of 193 431 posts in 2017/18. To remain within government's expenditure ceiling for compensation of employees, the department will reduce the funded establishment to 191 431 posts over the medium term. Funded, non-critical posts that are vacant will mainly be targeted for reduction over the MTEF period to minimise the impact of the expenditure ceiling on core service delivery."

- 11.11 According to the SAPS Annual Performance Plan for the 2017/2018 financial year (Tag J), in keeping with the compensation baseline ceilings approved by Cabinet, the SAPS plans to reduce personnel numbers from 194 431 in 2016/17 to 191 431 in 2019/20. The Department, however, does not foresee a reduction in the overall performance over the medium-term, as most of its performance targets in relation to the investigation and detection of crime will remain constant over the medium term. It is further reflected that the Department plans to develop a plan to expand public order policing; re-establish units in Cape Town, Durban and Nelspruit; re-establish 15 dormant units, establish 8 new units; and expand public order policing personnel to 8820 members by 2019/2020. For this reason, cabinet had approved allocations of R242 million in 2017/18 and R355.8 million in 2018/2019. This resulted in the projected increase of 7.9% over the medium-term in expenditure in the Specialised Interventions sub-programme in the Visible Policing programme.

E. PENDING LITIGATION

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12. On 31 March 2016 (Tag K), the Social Justice Coalition and Equal Education submitted a Notice of Motion to the Equality Court (High Court, Cape Town) in respect of which the Minister of Police as the 1st respondent, the National Commissioner of Police as the 2nd respondent, the Western Cape Police Commissioner as the 3rd respondent and the Minister for Community Safety as the 4th respondent, were cited. The applicants applied to the Equality Court for an order to be made based on the following declarations:

- (i) The allocation of human resources in the Western Cape unfairly discriminates against Black and poor people on the basis of race and poverty.
- (ii) The system employed by the SAPS to determine the allocation of police human resources unfairly discriminates against Black and poor people on the basis of race and poverty.
- (iii) Section 12(3) of the South African Police Service Act 68 of 1995, grants Provincial Commissioners the power to determine the distribution of police resources between stations within their province, including the distribution of permanent posts under the fixed establishment, not merely temporary posts.

The relief sought by the applicants is the following:

- (i) In respect of the Western Cape Province, the Provincial Commissioner should be compelled to, within 3 months of the date of the Court's order, prepare a provincial plan for the re-allocation of resources within the Western Cape to address the most serious disparities in the allocation of police human resources in the province. The provincial plan should be submitted to the Court and be advertised for public comment in accordance with directions to be issued by the Court. After hearing any arguments by the applicants and other interested parties, the Court should either –
 - approve the provincial plan;
 - approve an amended version of the plan; or
 - call for the Provincial Commissioner to file an amended plan and issue directions for further conduct of the matter.

The provincial plan should be implemented within 6 months of the date on which it is approved by the Court. The Court should retain supervision of the process until it is complete.

- (ii) In respect of the national Department, the applicants request that the Minister and National Commissioner should be compelled to re-evaluate the system for the allocation and distribution of human resources and submit a national plan within a period of 3 months which would guide the re-evaluation process, after the date of the Court order. Furthermore, the Department should submit reports to the Court every 4 months on the progress they have made on the implementation of the national plan. The process should be available to public scrutiny and institutional oversight.

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The Heads of Argument of the applicants (Tag L), is a lengthy document comprising of 123 pages. It argues in detail the allocation of resources in terms of the THRR, and accepts that the THRR was developed to meet a particular need, namely the allocation of police officers to each station. However, the applicants argue that the THRR results in the provision of more resources to rich, white, low-crime areas than poor, Black, high-crime areas.

F. FINDINGS

13. It is clear from the reports mentioned above, that the resource allocation in respect of the Western Cape Province has been the subject of several investigations. The reports/investigations mentioned above, are most probably only a few of several investigations that have been conducted into the allocation of resources in SAPS, considering the occurrence of crime in the country.
14. One issue that stands central to all the investigations and research conducted in specifically the Western Cape, is the dissatisfaction regarding the THRR. The THRR was designed to accommodate internal and external environmental factors affecting the burden of policing. The THRR therefore, determines the ideal resources that should be placed at a given police station to perform the functions for a given period of time. As stated in paragraph 5 above, the THRR calculates the ideal resources that should be allocated per police station as if funds were unlimited.
15. However, note is taken of the concern around the police-to-population ratio in the Western Cape Province, specifically in high crime areas within the metropolitan area of the City of Cape Town. In terms of section 11 of the SAPS Act, the National Commissioner is responsible for, amongst others, the fixed establishment of the SAPS, the number and grading of posts. The fixed establishment of the SAPS is dependent on the funds allocated to the Department.

The Provincial Commissioners in terms of section 12 of the SAPS Act, have command of and control over the service under his/her jurisdiction. Within that jurisdiction, a Provincial Commissioner is empowered to establish and maintain police stations and units in the province and determine the boundaries of station or unit areas. Furthermore, a Provincial Commissioner is empowered to determine the strength of the service under his/her jurisdiction, which would include the allocation of resources.

Scrutiny of the Annual Reports of the SAPS does not provide province specific information, but provides information in respect of programmes which includes allocations of resources across the whole of the Department. It needs to be mentioned that attempts that were made to obtain information from the Western Cape Provincial Commissioner on the methodology followed in the Western Cape in the allocation of resources to police stations based on the fixed establishment were in vain. In the absence of specific information on the methodology followed by the Western Cape Provincial Commissioner in respect of the

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allocation of resources within the province, the PSC is not able to determine if the process in place meets the demand of the province.

16. In the absence of any information on the methodology followed in the Western Cape Province, the PSC relied on the research available on the web. It is clear from the research conducted by the Department of Community Safety (Tag F), that there is a gap between the number of funded posts on the fixed establishment and the number of posts determined in terms of the THRR. The research further indicated that although there was a total of 22 038 posts on the fixed establishment as at 31 March 2015, only 20 604 posts were filled. The filling of posts would fall within the jurisdiction of the Provincial Commissioner. The fact that there is a fundamental difference between the number of posts determined in terms of the THRR and the fixed establishment, should not have an impact on the filling of posts within the province.
17. On the other hand, the current reality is that the financial constraints within the country, have an adverse effect on the whole of the Public Service. As indicated in paragraph 10.8 above, all departments are expected to adhere to the set compensation baseline ceilings approved by Cabinet on 13 January 2016.
18. Contrary to Ms Wenger's allegation that SAPS was set to receive an additional R12 billion over the medium term in terms of the revised expenditure for 2017, scrutiny of the AENE for 2017/18 indicates that the main appropriation in respect of the SAPS is reflected as R86 761 128, which is R264 000 less than the main appropriation of R87 024 128. This is confirmed in the Estimates of National Expenditure: 2018. Considering the SAPS' reporting in the Estimates of National Expenditure: 2018, that the department will reduce the funded establishment to 191 431 funded posts over the medium term in order to remain with government's expenditure ceiling for compensation of employees, it is clear that the allocation of human resources will be impacted negatively.
19. The most important development in relation to the allocation of resources to the Western Cape Province, is the pending litigation in the Equality Court. Although the crux of the litigation is the alleged unfair discrimination against Black and poor people on the basis of race and poverty, scrutiny of the court application indicates that the entire SAPS system for the allocation of resources is disputed. The PSC is therefore of the opinion that the outcome of the court case should be awaited as this would have a major impact on the allocation of resources within the SAPS.

G. RECOMMENDATIONS

20. In view of the above exposition, it is **recommended** that -
 - 20.1 in line with the provisions of section 207 (4) and (5) of the Constitution, 1996, read with section 12 of the SAPS Act, 1995, the Provincial Commissioner: Western Cape should draft a plan for presentation to the Portfolio Committee on the equitable allocation of resources within the province in line with the budget allocated to the province and the approved establishment, with specific focus on

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those stations highlighted in the Khayelitsha Commission Report where serious constraints have been reported, within a period of six months after the date of this report;

- 20.2 the plan should be submitted to the National Commissioner in terms of the provisions of section 207(5) of the Constitution, 1996;
- 20.3 vacant funded posts that are critical and are not earmarked to be abolished, should be filled within a period of six months after the date of this report;
- 20.4 the National Commissioner should monitor and evaluate the implementation of the Provincial Commissioner's plan in order to ensure compliance with the provisions of section 207 (4) and (5) of the Constitution, 1996, read with section 12 of the SAPS Act; and
- 20.5 feedback on the monitoring and evaluation of the implementation of the Provincial Commissioner's plan, should be provided to the Portfolio Committee on a six-monthly basis by the National Commissioner.



**DR TB LUTHULI
COMMISSIONER**

DATE: 13/06/2018