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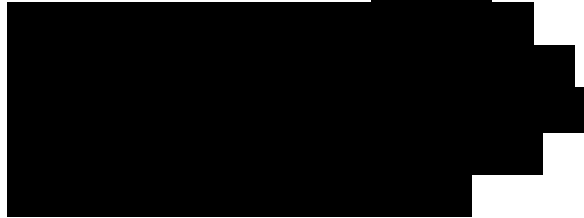
**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 2024-148658

In the matter between:

The Children's Institute,

Plaintiff / Applicant / Appellant



and

Minister of Home Affairs, Director-General: Department of Home Affairs, Western Cape Department of Home Affairs Provincial Manager, District Manager of Operations: Cape Metro and Overberg, Khayelitsha Office Manager: Department of Home Affairs, Bellville Office Manager: Department of Home Affairs, Cape Town Office Manager: Department of Home Affairs

Defendant / Respondent

Founding Affidavit

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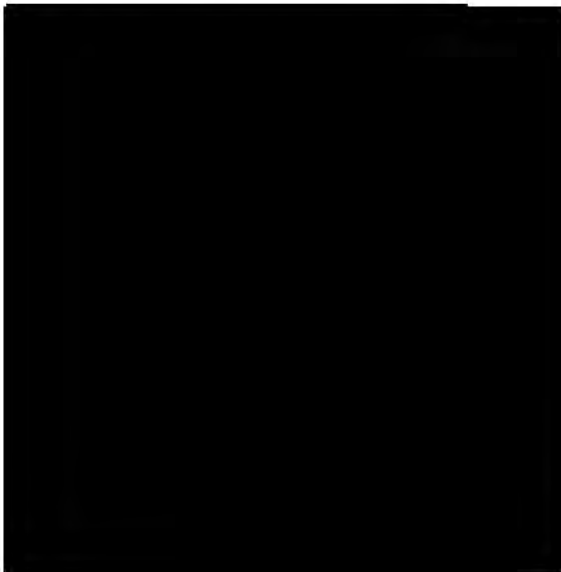
**Registrar of The High Court,
Western Cape Division, Cape
Town**

IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: _____

In the matter between:

THE CHILDREN'S INSTITUTE



First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

Sixth Applicant

Seventh Applicant

Eighth Applicant

Nineth Applicant



and

MINISTER OF HOME AFFAIRS

DIRECTOR-GENERAL: DEPARTMENT OF HOME

AFFAIRS

WESTERN CAPE DEPARTMENT OF HOME AFFAIRS

PROVINCIAL MANAGER

DISTRICT MANAGER OF OPERATIONS:

CAPE METRO AND OVERBERG

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

KHAYELITSHA OFFICE MANAGER: DEPARTMENT OF
HOME AFFAIRS

Fifth Respondent

BELLVILLE OFFICE MANAGER: DEPARTMENT OF
HOME AFFAIRS

Sixth Respondent

CAPE TOWN OFFICE MANAGER: DEPARTMENT OF
HOME AFFAIRS

Seventh Respondent

FOUNDING AFFIDAVIT



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I the undersigned,

MBONISI RODNEY NYATHI

do hereby make oath and state as follows:

1. I am an adult male, employed as a Legal Researcher at the first applicant, the Children's Institute ("**Children's Institute**"), a research and advocacy unit based in the Health Sciences Faculty of the University of Cape Town.



2. I am duly authorised to depose to this affidavit on behalf of the first applicant. I am also authorized to depose to this affidavit on behalf of the second to ninth applicants.
3. The contents of this affidavit fall within my personal knowledge, except where otherwise indicated by the context, and are to the best of my knowledge and belief both true and correct. Where I make legal submissions, I do so on the advice of the applicants' legal representatives, which advice I believe is correct.
4. The supporting affidavits of the second to ninth applicants are filed alongside this affidavit and must be read in conjunction with this affidavit.

INTRODUCTION AND OVERVIEW

5. This application is brought because of the immense and ongoing failure of the State to decide applications for the late registration of births, and the significant impact this has on the constitutional rights of those whose applications are caught in the backlog, and particularly of children.

6. The application seeks to address two issues:

6.1. Firstly, it is aimed at reviewing and setting aside the failure by the Department of Home Affairs (“DHA”) to decide the second to fourth and sixth to eighth applicants’ applications for the late registration of their children’s births, and to decide the ninth applicant’s application for the late registration of her own birth. The applicants ask the Court to direct that decisions be finally taken on those applications within 30 days of the Court’s order.

6.2. Second, and on the systemic level, the application seeks to address the DHA’s backlog of late registration of birth applications, that has gradually increased since 2018, and has resulted in unregistered births in respect of more than 258 000 children and young adults. The applicants ask the Court to declare unconstitutional the failure to have a reasonable plan to decide the applications in the backlog, and to direct the first respondent to remedy that.



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which includes verification of supporting documents and interviews with the applicants and their children.

11. In response to a parliamentary question on 19 May 2023, the then-Minister of Home Affairs, Dr Aaron Motsoaledi, revealed that a significant backlog of LRB applications had accumulated from January 2018 to December 2022. A copy of this parliamentary answer is annexed marked “MN1”.

12. The Minister’s answer only provides totals per year of the backlog for applications lodged between 2018 and 2022. It fails to provide an overall total for the accumulated backlog, despite the Parliamentary question asking him to clarify that backlog.



13. To work out the total backlog, the Children's Institute has added the totals of undecided applications per year over the five-year period. This reveals a total of 257 645 undecided applications as at the end of 2022. The calculation is shown in the document annexed marked “MN2”.
14. This figure of 257 645, represents the approximate number of undecided LRB applications that had accumulated since 2018 and up to the end of 2022. It does not account for LRB applications filed prior to 2018 that remain undecided. It also does not account for LRB applications filed after 2022 that are undecided.

15. It is therefore likely an under-estimate of the actual size of the backlog. What is certain is that there are, at a conservative estimate, at least a quarter of a million people, mostly children, who have been waiting for a number of years for their applications to register their birth to be decided.
16. The consequence of this backlog and the DHA's failure to decide LRB applications are well-illustrated in the plight of the second to ninth applicants and their children, some of whom have been waiting for more than six years for their applications to be decided. The DHA's failure to decide the children's LRB applications and the LRB application of the ninth applicant, who is a young mother of two unregistered children, has left the applicants' children and the ninth applicant herself, and hundreds of thousands of other children and young adults, without the recognition and documentation that they need to access some of the most basic social goods and services.
17. Not only does children's unregistered status negatively impact their own lives, but it creates an intergenerational ripple effect, ultimately resulting in their children also remaining unregistered after birth for significant periods of time. This inter-generational effect is evident in the facts of the ninth applicant's affidavit where the DHA's delay in taking a decision regarding her own LRB application is preventing her from lodging LRB applications for her two children.
18. While this backlog and the delays in deciding LRB applications are the products of multiple causes, this application will highlight that a significant



contributing factor to both is the DHA's failure to acknowledge the backlog and the factors within its control that have created the backlog, and to develop and implement a clear and comprehensive plan to decide the applications in the backlog, and to prevent a future backlog from accumulating.

19. The applicants' experiences show that over the past few years:

19.1. the DHA has failed to take steps to decrease the impermissible and unreasonably long time taken to verify applications, conduct interviews, and ultimately decide LRB applications,



19.2. the DHA has failed to adopt any coordinated, transparent and uniform approach to processing LRB applications between offices across provinces for children born in one province and registered in another.

20. In addition to the evidence of the applicants' experiences, evidence presented by DHA itself to Parliament demonstrates that DHA has failed to adopt a plan or re-allocate resources towards addressing the bottlenecks and the immense backlog in the LRB applications system. This is despite DHA's demonstrated willingness to have done so for other documentary backlogs that fall under its mandate. In a presentation given to the Home Affairs Portfolio Committee on 14 March 2023, the DHA described the size of its backlogs for many of the documents falling under its mandate, provided an analysis of where the bottlenecks lay, and described its plans to address these backlogs. A copy of these presentations is annexed marked "MN3".

- 20.1. The backlogs presented on were for applications for temporary residence visas, permanent residence permits, unabridged marriage certificates, copies of unabridged birth certificates, unabridged death certificates, amendments to birth certificates, and asylum appeals.
- 20.2. The DHA's plans for addressing each backlog included changing their procedures and re-allocating staff to speed up their processing time.
- 20.3. No mention is made in the presentations of the LRB applications backlog, and no plan was presented on how the DHA intended to address this backlog.
21. In response to a question from a member of parliament raising the omission of the LRB backlog from its presentation, the DHA stated that it did not have statistics on the volume of outstanding LRB applications. When asked further about what it was doing to decrease the backlog in LRB applications, the DHA indicated that it was raising public awareness on the importance of registering a child's birth within 30 days. A recording of the briefing can be found on the Parliamentary YouTube channel (<https://www.youtube.com/watch?v=sIBLVavgrS0>), and the relevant answer is given at 2:58:50 of the video. A transcription of the DHA's response is annexed hereto as annexure "MN4".
22. The DHA's purported answer, in the applicants' view, is no answer at all. The issue is not what the DHA is doing to minimise applications for late registrations of birth. It is what the DHA is doing to decide the applications in



the massive backlog of undecided LRB applications, which violates the rights of children to have their births registered, and a host of other inextricable constitutional rights.

23. Simply put, the DHA has failed to devote meaningful attention to the LRB backlog, despite the significant and devastating effect it has on the lives of a very vulnerable segment of society – primarily children and young adults living in poverty.

24. Ultimately, this situation is untenable and violates the constitutional rights of hundreds of thousands of children and adults.



25. The applicants have spent years waiting for the DHA to decide their LRB applications, to no avail. In many cases, this delay results in the imposition of further requirements on the applicants due to the child aging during the period of delay, placing more administrative obstacles in their path. Their attempts to hasten the process have thus far proved ineffective. With the exception of the fifth applicant who had waited two years and nine months since she lodged her application and whose case was finally resolved in response to a letter of demand, just prior to this case being launched. Without the intervention of the Children's Institute and the Legal Resources Centre ("**LRC**") it is unlikely that her matter would have been resolved.

26. Consequently, this application seeks to have the respondents' failure to decide the second to fourth, and sixth to ninth applicants' LRB applications declared

unlawful, and requests the court to direct the respondents to verify and process their applications within 30 days.

27. However, this relief will not prove effective in assisting the hundreds of thousands of similarly placed children and young adults still waiting for a decision on their LRB applications. Nor will it assist in resolving some of the broader systemic issues complicating DHA's progress in finalizing LRB applications and resolving the existing backlog, nor will it prevent future backlogs.



28. Therefore, the applicants also seek further relief, aimed at ensuring the development of a plan to expedite decision making, in an efficient, effective, and procedurally fair manner, on each of the undecided applications in the LRB backlog and improve the future processing of LRB applications.

29. To this end, the applicants ask for an order in the following terms:

- 29.1. Reviewing and setting aside the second respondent, or his delegees', failures to decide on the second to fourth, and sixth to ninth applicants' LRB applications, in accordance with section 6(2)(g) of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**");
- 29.2. Directing the second respondent, or his delegees, to decide those applications within 30 days of service on the respondents of this Court's order;

29.3. Declaring that section 28(1)(a) of the Constitution, read with sections 28(1)(b) & (c), 28(2), 9, 10, 27 and 29 of the Constitution, requires the State to devise and implement a comprehensive and coordinated plan to address the backlog in deciding applications for the late registration of births, and to prevent the accumulation of future backlogs;

29.4. Directing the first respondent to formulate and report to the Court on the implementation of a reasonable plan aimed at deciding the applications in the LRB application backlog and improving the system of deciding LRB applications so that the backlog does not re-emerge. Later in this affidavit, I set out what the applicants contend would be the appropriate minimum content for this plan, and the way the Court should oversee its implementation.



30. In the remainder of this affidavit, I will address the following in turn:

30.1. First, I describe the parties to this litigation;

30.2. Second, I detail the relevant constitutional, legislative and policy framework governing the late registration of births in South Africa;

30.3. Third, I briefly set out the contents of the DHA's policy framework for deciding LRB applications;

- 30.4. Fourth, I discuss the significant and constitutionally impermissible backlog in pending and undecided LRB applications, and the DHA's demonstrated failure to decide those applications within a reasonable time.
- 30.5. Fifth, I set out some of the devastating impacts of the backlog on the lives of those affected;
- 30.6. Sixth, I show that the respondents' failure to decide the second to fourth, and sixth to ninth applicants' LRB applications are unlawful and fall to be reviewed and set aside;
- 30.7. Seventh, I deal with the appropriate relief, both in relation to the unlawful failure to decide the second to fourth, and sixth to ninth applicants' LRB applications and the unconstitutional systemic backlog in deciding such applications



THE PARTIES

The applicants

31. The first applicant is the **CHILDREN'S INSTITUTE**, a multi-disciplinary research and advocacy unit in the Health Sciences Faculty of the University of Cape Town. The Children's Institute conducts research, advocacy, and education on children's rights. The work of the Children's Institute is aimed at promoting equality and realising the rights of all children in South Africa. One of the Children's Institute's projects provides legal services to caregivers of children without birth certificates with the aim of supporting them to obtain birth

certificates via the late registration of birth system and social grants while awaiting their documents. The Children's Institute has been running this project since 2018 and providing support to caregivers and children in all provinces of South Africa.

32. Acting in the public interest, the Children's Institute has been assisting the second to ninth applicants and other similarly situated caregivers and their children in engagements with the DHA regarding their undecided LRB applications. Other parents, caregivers and children that the Children's Institute has been providing ongoing assistance to are listed in Annexure A, attached to the Notice of Motion in this matter. Their detailed supporting affidavits are also attached to this Founding Affidavit as annexures.



33. The Children's Institute has the necessary standing to litigate this matter in terms of sections 38(a), (b), (c) and (d) of the Constitution. It brings this application:

- 33.1. In its own interest, as an organisation committed to the realisation of the rights and the bests interests of children in South Africa as guaranteed in the Constitution;
- 33.2. on behalf of all children and other individuals who have made LRB applications that remain undecided, including those whose applications are affected by the current LRB application backlog and the broader deficiencies in the respondents' processing of LRB applications, in violation of their rights to a name and nationality, and

to have their best interests considered of paramount importance. This includes the applicants in Annexure A of the Notice of Motion;

33.3. in the public interest, including the interest of all children and individuals whose ability to register births are impaired by the respondents' conduct.

34. The second applicant is [REDACTED] who institutes these proceedings in her personal and representative capacity on behalf of her minor daughter, [REDACTED] who was born on [REDACTED] 2012. [REDACTED] LRB application was lodged on 20 February 2019. It is now nearly six years since the application was lodged, and the respondents have not decided that application. [REDACTED] was 7 years old when her LRB application was lodged. She is now 12 years old and still without a birth certificate. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit.



35. The third applicant is [REDACTED] who institutes these proceedings in her personal and representative capacity on behalf of her minor son, [REDACTED] who was born on [REDACTED] 2009. [REDACTED] LRB application was lodged on 13 March 2018. It is now over six and a half years since the application was lodged and the respondents have not decided on that application. [REDACTED] was 8 years old when his application was lodged. He is now 15 years old and still without a birth certificate. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit.

36. The fourth applicant is [REDACTED] who institutes these proceedings in her personal and representative capacity on behalf of her minor son, [REDACTED] [REDACTED] who was born on [REDACTED] 2015. [REDACTED] LRB application was lodged on 20 September 2018. It is now over six years since the application was lodged, yet the respondents have not taken a decision on that application. [REDACTED] was 3 years old when his application was lodged. He is now 9 years old. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit.

37. The fifth applicant is [REDACTED] who institutes these proceedings in her personal and representative capacity on behalf of her minor daughter [REDACTED] who was born on [REDACTED] 2020, and on behalf of other parents and children similarly situated [REDACTED] LRB was lodged on 01 February 2022. It took two years and nine months for the respondents to make a decision on her application, and only after intervention by the Children's Institute and the LRC [REDACTED] was 2 years old when her application was lodged. When the respondents finally issued her birth certificate on 22 November 2024, she was four years old. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit. While Ms [REDACTED] no longer seeks individual relief for her daughter, her experience in attempting to obtain the birth certificate, is illustrative of the challenges that applicants face when trying to navigate the LBR system.



38. The sixth applicant is [REDACTED] who institutes these proceedings in her personal and representative capacity on behalf of her minor son [REDACTED] who was born on [REDACTED] 2015. [REDACTED] LRB

The seventh applicant is [REDACTED] who institutes these proceedings in his personal and representative capacity on behalf of his minor son, [REDACTED] who was born [REDACTED] 2012 and minor daughter, [REDACTED] who was born [REDACTED] 2014. Both of his children's LRB applications were lodged on 09 March 2021. It is now over three and a half years since the applications were lodged, yet the respondents have not taken a decision on either of those LRB applications. [REDACTED] was 8 years old when his application was lodged. He is now 12 years old and still without a birth certificate. [REDACTED] was 7 years old when her application was lodged. She is now 10 years old and still without a birth certificate. Mr [REDACTED] supporting affidavit will be delivered along with this founding affidavit.

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without a birth certificate. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit.

41. The ninth applicant is [REDACTED] who institutes these proceedings in her personal capacity in relation to her own LRB application which was lodged on 06 January 2022 and on behalf of her two minor children aged 4 and 12 for whom she is unable to lodge LRB applications until her own LRB application is finalized. It is now close to three years since the application was lodged, yet the respondents have not taken a decision on the application. Ms [REDACTED] was 33 years old when she applied. She is now 35 years old and still does not have a birth certificate. Ms [REDACTED] supporting affidavit will be delivered along with this founding affidavit.



The respondents

42. The first respondent is the **MINISTER OF HOME AFFAIRS** ("the Minister") cited herein in their official and representative capacity as the political head of the DHA and the person responsible for the acts and omissions of officials within the National Department with their offices situated at FSI Building, 1st Floor, Arcadia Street, Pretoria, Gauteng, where these papers will be served. The Minister is responsible for overseeing the operations of the DHA in delivering services to the public in accordance with the Constitution and applicable legislation.
43. The second respondent is the **DIRECTOR-GENERAL: DEPARTMENT OF HOME AFFAIRS** ("Director-General") cited herein in their official capacity with their office situated at Hallmark Building, Corner of Johannes Ramokhoase and

Thabo Sehume Street, Pretoria, Gauteng. The Director-General is required to provide strategic leadership and direction to the DHA and ensure the effective management, integration and impact of programmes within the portfolio of the Minister. The Director-General is also charged with the administration of the Birth and Death Registration Act.

44. The third respondent is the **WESTERN CAPE DEPARTMENT OF HOME AFFAIRS PROVINCIAL MANAGER** cited herein in their official capacity and to the extent that they have an interest in the matter with their office situated at 56 Barrack Street, Faircape Building, Cape Town, Western Cape.



45. The fourth respondent is the **DISTRICT MANAGER OF OPERATIONS CAPE METRO AND OVERBERG** cited herein in their official capacity and to the extent that they have an interest in the matter with their office situated at 177 Voortrekker Road, Bellville, Cape Town, Western Cape.

46. The fifth respondent is the **KHAYELITSHA OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS** cited herein in their official capacity and to the extent that they have an interest in the matter with their office situated at the corner of Tsolo Street and Mzali Crescent, Khayelitsha, Cape Town, Western Cape.

47. The sixth respondent is the **BELLVILLE OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS** cited herein in their official capacity and to the extent that they have an interest in the matter with their office situated at 177 Voortrekker Road, Bellville, Cape Town, Western Cape.

48. The seventh respondent is the **CAPE TOWN OFFICE MANAGER: DEPARTMENT OF HOME AFFAIRS** cited herein in their official capacity and to the extent that they have an interest in the matter with their office situated at 56 Barrack St, Cape Town City Centre, Cape Town, Western Cape.
49. Service of these proceedings will be affected on the first to the seventh respondents as well as on the respective state attorneys.

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

The Constitution

50. Section 28 of the Constitution provides for the rights of the child.
51. Section 28(1)(a) of the Constitution provides that:

“Every child has the right to a name and nationality from birth.”

52. This right gives rise to a corresponding constitutional obligation on the state to facilitate the registration of the births of children and to issue official documentation to this effect.
53. That is underscored by a range of other constitutional rights, which are inextricably linked to the realisation of the rights to a name and nationality from birth.



54. In terms of section 28(2), a child's best interests are of paramount importance in every matter concerning the child. An application for a child's birth registration is clearly a matter concerning the child; and a backlog of applications for birth registrations is also clearly a matter concerning children. The best interests principle is accordingly at the core of this application.

55. In addition:

55.1. Section 9(1) provides that everyone is equal before the law and entitled to equal protection and benefit of the law. Section 9(2) in turn provides that equality includes "the full and equal enjoyment of all rights and freedoms".

55.2. Section 10 gives constitutional recognition to the inherent dignity of every person and provides that everyone has "the right to have their dignity respected and protected".

55.3. Section 28(1) (b) provides that every child has the right to family care, parental care or alternative care.

55.4. Section 28(1)(c) provides that every child has the right to basic nutrition, shelter, basic health care services and to social services. I am advised that the right to basic nutrition is 'immediately realisable'.



- 55.5. Section 29(1)(a) of the Constitution provides that everyone has the right to a basic education. I am advised that this is a right which is "immediately realisable".
- 55.6. Section 27(1) provides that everyone has the right to have access to health care services, sufficient food and water, and social security, including in they are unable to support themselves or their dependents, appropriate social assistance.
56. Registration of birth is an essential pre-requisite for the realisation of each of these rights.
57. Once a child's birth is registered and they are issued with official documentation, their existence as well as their citizenship is given formal recognition. They are given an identity number and can prove and establish their identity and citizenship.
58. This is often an important step in accessing a multitude of constitutional entitlements. For that reason, birth registration is not only a corollary of the right to a name and nationality, but also an essential gateway to children's enjoyment of their rights to basic education and further education, basic nutrition, social services, and access to healthcare and social security. It is also a gateway to family care or alternative care for children in need of adoption



59. It is also a clear requirement of both the equality provisions of the Constitution, and the constitutional imperative to respect and protect the inherent dignity of every person.
60. In deciding LRB applications, and in addressing the massive backlog in undecided applications, the DHA is also obliged to ensure that it gives effect to basic values and principles governing public administration listed in section 195 of the Constitution.
61. This makes it incumbent on the DHA to, amongst other things, maintain a high standard of professional ethics when processing LRB applications, ensuring that the process remains responsive to the needs of applicants. It also requires the processing of LRB applications impartially, fairly, equitably and without bias.
62. Similarly, the DHA is constitutionally prohibited from failing to decide LRB applications in a reasonable time, and from failing to develop and implement a coordinate plan to decide the applications in the backlog of undecided applications. Section 237 of the Constitution makes this clear. It provides:

"All constitutional obligations must be performed diligently and without delay." (my emphasis)

The Births and Deaths Registration Act 51 of 1992, and Regulations on the Registrations on Births and Deaths, 2014



63. The State's obligation to register the births of all children born in South Africa is given effect to by the Births and Deaths Registration Act 51 of 1992 ("**the BDRA**"), together with the Regulations on the Registration of Births and Deaths, 2014 ("**the Regulations**").
64. The BDRA and the Regulations differentiate between two different procedures for birth registration.
65. Both procedures require a notice of birth to be given. The default position is that the notice of birth must be given within 30 days of the birth taking place. However, to cater for the reality that this is not always possible or done, the BDRA and the Regulations also provide for notice of birth to be given at a later stage.
66. Section 9(1) of the BDRA, read with regulation 3 of the Regulations deals with the provision of notice immediately after birth. Those provisions require and regulate the notice of birth given within the first 30 days following birth. If a parent, guardian or next-of-kin gives notice of the birth of a child within 30 days, they are required to complete and submit the relevant form and provide the child's proof of birth form ("**POB**"), along with a copy of the parents' identity document, passport, visa, refugee permit or asylum-seeker permit, where these documents are available.
67. If notice of birth is given more than 30 days after the birth, the process of giving that notice and having that notice duly approved is governed by section 9(3A)



of the BDRA, read with regulations 4 and 5 of the Regulations. This is what I refer to as the LRB application process.

68. The LRB application process differs depending on whether the applicant for registration is older or younger than 1 year old. In both instances an LRB application must also be accompanied by reasons for the failure to register the birth within 30 days, a proof of birth form from the hospital or an affidavit by a South African citizen who witnessed the birth if the child was born at home, the biometrics of the child if the child is aged 7 or older, copies of the identity documents or passports and visas of the child's parents, legal guardian or next-of-kin, fingerprints of the child's parents, legal guardian or next-of-kin, a copy of a marriage certificate if the parents are married, and a death certificate if a parent is deceased, where these documents are available.



69. If the child is orphaned, as is the case of [REDACTED] the child in the care of the eighth applicant, then sections 9(1) and 12(2) of the BDRA read with regulations 4(2) and 5(2) of the Regulations allows a next-of-kin to register the child's birth as the informant. To do so, the same proof outlined in the paragraph above is required and the next-of-kin is also required to complete a prescribed next-of kin affidavit and provide the death certificate of the deceased parent or parents.

70. If a next-of-kin is not available to register an orphaned child, or a child has been abandoned, then section 12(2) of the BDRA read with regulation 9 of the Regulations require a social worker to apply for the child's birth registration.

71. Regulation 6(3) of the BDRA Regulations then requires the Director General, or their duly appointed representative, to verify the information included in the LRB application. For the purposes of that verification, the Director General may also, prior to the approval of the notice of birth, require that the applicant be interviewed by a screening panel in accordance with regulations 6(4) and (5).
72. Once a notice of birth has been made in the prescribed format, the Director-General or their delegate is required to decide on the application and issue birth certificates to successful applicants in terms of section 9(7) read with section 4 of the BDRA.
73. Section 4(1) of the BDRA makes provision for the Director-General to authorize, in writing to any person, or an officer, or a category of officers or an employee or a category of employees in the public service, with the delegated authority to exercise or perform, in general or in cases of a particular nature, any power or duty conferred or imposed on the Director-General in terms of the BDRA.
74. While the Children's Institute has not had sight of any written delegation of power to decide on applications for LBR, I believe that the Director-General has delegated this power to the Provincial Manager and the District Managers of the DHA in the Western Cape. I say so for the following reasons:



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74.1. In answer to a Parliamentary question dated 1 November 2024, the Minister advised that three District Managers in the Western Cape chair the LBR process for children that are between 1 and 6 years old. The Provincial Manager in the Western Cape chairs the LBR categories 7-14 years and above 15 years. This answer is attached as **MN5**;

74.2. The Standard Operating Procedures on Registration of Births: Children Registered: 15 Years and Above ("**SOP 2017**"), annexed as "**MN6**" states at page 8 that:



"The responsible provincial manager must ensure that in their respective offices, officials are appointed as screening committee members annually (per financial year). The screening committee consists of: chairperson, secretary, immigration officer (for 15 years and above), additional member."

While the SOP 2017 will be discussed in more detail below, the screening committee is responsible for conducting interviews with the applicants.

74.3. As will be addressed more fully below, in the experience of the Children's Institute, as well as some of the applicants and our other clients, the Provincial Manager serves on the screening committee and no LBR interviews can be conducted unless he is present. Where children are below the age of 15 years, the application is also dealt with at a provincial level and is not sent to the national DHA for a decision. This means that

the applications for LRB for children below 15 years, never actually reach the office of the Director-General, but is decided at the provincial level.

75. For the reasons set out above, I am of the view that the Provincial Manager, and possibly the District Managers in the Western Cape have the delegated authority to decide applications for LBR. If I am in correct in this view, I invite the second respondent to indicate who the delegated authorities are in the answering papers.

76. Whether a notice of birth is given within 30 days of birth, or later, if the notice is approved then, in terms of regulation 6(1) of the Regulations, the Director-General, or his delegate, must issue to the parents a birth certificate (or an acknowledgment on the prescribed form if, for any reason, the birth certificate cannot be issued immediately).



77. This is the legislative and regulatory framework under which the DHA is required to consider a notice of birth together with the prescribed documentation, and in terms of which the DHA may verify the information therein and approve or reject the notice.

78. The specific procedures followed by the DHA in verifying and processing LRB applications are, in turn, detailed in DHA's Standard Operating Procedures. DHA's internal procedures differ based on whether the child in question is over or under 15 years of age.

THE DHA'S POLICIES ON LRB APPLICATIONS

79. The specific procedures the DHA undertakes to apply in processing LRB applications are detailed in the DHA's internal Standard Operating Procedures ("**SOP**").
80. It should be noted that these SOPs are not always publicly available or easily accessible. The SOPs that I discuss below are those that we are aware of and that we believe guide the implementation of the LRB process. However, it may be that there are also other SOPs that DHA uses, but to which we have no access. As far as we are aware, there are two SOPs that are relevant to this application.
81. The DHA's Standard Operating Procedures on Registration of Births: Children Registered within 30 Days and below 15 Years ("**SOP 2021**") details how the DHA intends to deal with LRB applications made in respect of children below 15 years of age. A copy of this SOP is annexed marked "**MN7**".
82. The Standard Operating Procedures on Registration of Births: Children Registered: 15 Years and Above ("**SOP 2017**"), already annexed as "**MN6**", details the DHA's policy framework for dealing with LRB applications lodged in respect of children and young adults older than 15 years of age.
83. For completeness, we provide a brief overview of the processes envisaged in each of these two internal DHA policies.

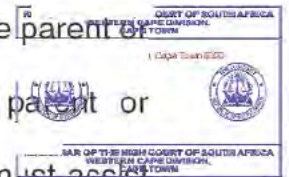


Late Registration of Births of Children below the Age of 15 Years Old

84. According to SOP 2021, the processing of LRB applications lodged in respect of children below the age of 15 is to be completed at the DHA office where the application was lodged.

85. The envisaged process is as follows:

85.1. The front desk clerk at the receiving office is required to verify the parent or informant's identity virtually using their fingerprints. If the parent or informant's fingerprints are not verifiable on HANIS, the clerk must assist the parent or informant with applying for a new identity document so that their prints can be registered. (Page 20).

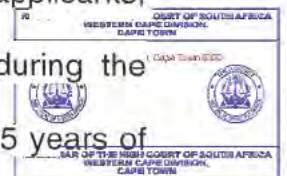


85.2. After the parent or informant has been verified, the clerk is required to further verify the LRB application. Once the clerk has completed their verification of the application, their supervisor is also required to verify the application. (Pages 20 – 24).

85.3. After the application has been verified, the clerk will capture the child's details and allocate them with an ID number, print their birth certificate, check the correctness of the birth certificate, stamp and sign the birth certificate, and issue the certificate to the informant. (Pages 24 – 27).

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- 85.4. After the LRB application has been finalized and the child's birth registered, the application will be sent to the DHA's head office to be archived. (Page 27).
86. No mention is made of the need to conduct any screening interviews for children below the age of 15 years old. However, through the Children's Institute's work assisting families in lodging their notices of birth and following up on them, as evidenced by the affidavits of several of the other applicants, it is common practice for screening interviews to take place during the processing of LRB applications for all children below the age of 15 years of age irrespective of the DHA's internal policies that the Children's Institute has copies of, making no provision for such interviews.
87. While the Director-General and their delegates are empowered to interview any applicant and informant prior to approving their notice of birth in terms of Regulation 6(4) of the Regulations, interviews are not set out as a requirement for all LRB applications, and the current SOP 2021 does not require interviews for LRBs under the age of 15 years. Where interviews do take place, they take place in an unguided and ad hoc manner, which may lengthen the process unnecessarily.
88. As far as verification of the documents is concerned the SOP 2021 provides that officials are required to verify information at the relevant medical facility where a child is alleged to have been born if certain information is unclear.



89. At page 21, the SOP indicates that:

"If any information is not clear on DHA –24/PB please refer back to the medical facility where the child was born or immunised to obtain a clear and certified copy from their records. The medical practitioner can also issue an affidavit statement to clarify mistake on the DHA-24/PB, and the facility stamp with date and signature must be affixed on the copy."
(my emphasis)

90. The application process for the late registration of births for children below the age of 15 years old is also entirely contained within local DHA offices. The process also relies on the submission of hardcopy documents alone. Only once an application is finalized and the birth certificate printed and issued, is any information regarding that application sent to DHA's head office to be archived.

91. This process appears to make it incredibly difficult, if not almost impossible, for the First and Second Respondents to keep track of and maintain oversight over undecided LRB applications made in respect of children below the age of 15 years old. This was evident in the briefing to the Portfolio Committee on Home Affairs on 14 March 2023. In this meeting, the DDG: Civic Services, Mr Thomas Sigama, acknowledged that the LBR process was still "manual" and they are adjudicated at local offices, which makes it difficult for DHA to determine the volumes of these applications.

Late Registration of Births of Children above the Age of 15 Years Old

92. The process which the DHA sets out to employ in respect of LRB applications for children over the age of 15 years old, which is set out in the SOP 2017, is slightly more complicated than the process for children who are younger than 15 when notice of birth is given.
93. The process under the SOP 2017 is as follows.

93.1. Once an application is submitted, an official at the office where the application was lodged is required to check that the application is complete. The official will check that all the correct documentation has been submitted.



93.2. If the application is complete, the official will issue an acknowledgment of receipt. If the application is incomplete, the official will not accept it and direct the applicant to gather all outstanding documents or information. (Page 13).

93.3. If the application is complete, the official will verify the informant's fingerprints online. (Page 13).

93.4. After the application has been accepted, the supervisor at the relevant DHA office is required to assure quality of the documents accompanying the application. No mention is made of what exactly is required to ensure the documents pass muster. (Pages 13 – 14).

93.5. The application is then sent to the screening committee which is responsible for interviewing the applicant and informant. The provincial manager is responsible for appointing officials to the screening committees of the respective offices under their supervision every financial year. The committee must consist of a chairperson, secretary, immigration officer and an additional member and a quorum of three officials is required to conduct an interview. (Page 8).

After every interview, the committee is required to either recommend that the applicant's birth be registered or to notify the parties and relevant officials if they suspect the application is fraudulent. If the panel is indecisive, the matter can also be referred to the provincial screening committee. (Pages 14 – 16).



93.6. If the committee recommends that the application be approved, the hardcopy application along with the minutes of the applicant's screening interview and the committee's evaluation sheet are couriered to the DHA's head office in Pretoria. (Page 16).

93.7. At the head office, an official checks the completeness of the application received, returning it to the relevant local office if it is incomplete. The informant and applicant's fingerprints are verified again. If the verification process is successful, an ID number is generated for the applicant. (Pages 16 – 17).

93.8. Once the application process is completed, the applicant receives a notification that their application has been finalised. (Pages 17 – 18).

94. Significantly, the SOP 2017, at page 8, provides an outer time limit for deciding applications. It provides:

“the LRB application for persons 15 years and above must be finalized within 180 days. Provinces have 120 and Head Offices have 60 days.”

95. No time limit is provided for the LRB applications of persons younger than 15 years old in the SOP 2021. The Children’s Institute does not know the reason for the differentiation if any. In any case, the vulnerability of younger children and the need for them to be able to urgently prove their identity and citizenship, among other things to promote access to healthcare, social services, social assistance and basic education, means that the decisions on their notices of birth ought to be made in an even quicker time.

96. However, from the experience of myself and the Children’s Institute in assisting families with LRB applications, the experience of the other applicants, and the DHA’s backlog of undecided applications, it is clear that the DHA takes far longer than 180 days to decide LRB applications, irrespective of whether those applications are made in respect of children over or under the age of 15 years.

97. What has become apparent over time is that applications often stall while waiting for verification by local DHA offices. Verification itself then takes

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considerable time, and applications can also get stuck at this stage due to a lack of co-operation between provincial offices or between different government departments. In many other cases, it appears to take a considerable amount of time for interviews to be scheduled and conducted.

98. As explained in more detail below, the delay at pre-verification and verification stage is aggravated by the tendency of some DHA offices to attempt to verify supporting documents through two different means. Similarly, the DHA's failure to ensure that there are any plans in place or adequate resource-sharing between offices to assist in verifying documents between provinces means that it takes significantly longer to verify documents pertaining to births in other provinces.



99. I turn now to detail the delays in deciding LRB applications. This exposition should be read together with the supporting affidavits of the eighth to ninth applicants, and the supporting affidavits of the parents and caregivers listed in Annexure A to the Notice of Motion.

THE EXTENT AND APPARENT REASONS FOR THE BACKLOG

100. Despite the essential need to ensure the swift processing of all applications for birth registration, the respondents have failed to ensure the swift processing of the applicants and hundreds of thousands of other individuals' LRB applications.

101. Below, I will set out what the Children's Institute, together with the applicants and other individuals that the Children's Institute assists, has identified regarding the extent of the backlog, the manner in which it manifests, and the impact that it has.

The extent of the backlog of LRB applications

102. When the former Minister was asked about the backlog of LRB applications in 2023, his answer revealed that not only was there a backlog of approximately 257 645 undecided LRB applications, but that the DHA was, on average, deciding fewer and fewer of the total LRB applications lodged each year.



103. In 2018, 18% of LRB applications were not finalized. This increased to 19% in 2019, 20% in 2021, and 21% in 2022. The only exception was 2020 when there was an increase in the percentage of the LRB applications finalized due to a catch-up strategy after the first hard Covid-19 lockdown, with the final percentage for that year sitting at 17% of applications made in that year still awaiting a decision.
104. The response revealed that from 2018 at the earliest, the DHA has failed to decide all the LRB applications it had received for each year, growing the backlog year on year.
105. This statistic also only accounts for a small proportion of the total number of undocumented individuals who do not have birth certificates. The approximately 258 000 individuals reflected in the DHA's figures only accounts

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for those who have already lodged a LRB application. Those children who are yet to lodge a LRB application are not currently accounted for in this backlog.

106. Statistics obtained from the Department of Basic Education reveal that there are, in fact, many more children whose births have not been registered. A Learner Unit Record Information and Track System Report for 2022, filed by the Respondents in another case before the Pretoria High Court, under case number **[Case No. 14238/21]**, reveals that there was a total of 1 140 543 learners (between the ages of 5 and 21) who were attending school, who did not have an identity number and that 73% of these learners were South African citizens. A copy of this report is annexed marked “MN8”.



107. For these approximately 800 000 South African learners to obtain a South African identity number, they first need to go through the LRB application process. Some of these learners, like the children of the second to eighth applicants in this matter, will already be in the backlog of 258 000 and waiting for their applications to be decided, while the majority still need to lodge their LRB applications, indicating a continual need for the LRB application system to function reliably, effectively, and swiftly.
108. However, there is at present no plan to address the massive backlog or improve the LRB system, and the experience of the Children's Institute and the second to ninth applicants provides no indication that, absent such a plan, the backlog can be addressed or even that a continued escalation of that backlog can be prevented.

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109. Paired with the recent decline in the total percentage of LRB applications decided in the last 6 years, and the high number of learners in the school system without birth certificates, absent the Court's intervention, the backlog can reasonably be expected to continue to grow exponentially in the years to come.

The absence of a plan to address the backlog

110. Despite knowing of the immense backlog in undecided LRB application, the DHA has no apparent plan to address that backlog.



111. As far as the Applicants are aware, the DHA has not even acknowledged a need for such a plan.
112. Instead, the DHA's primary focus in addressing LRB applications appears to largely be to ignore the backlog and instead focus on encouraging early registration of birth and discouraging LRBs.
113. While encouraging early registration is an important policy goal which we support, the DHA's failure to acknowledge that there currently is and always will be a need for LRB is not in the best interests of the significant number of children in need of the LRB system, and certainly not in the best interests of the hundreds of thousands currently tied into that system.

114. On 18 July 2024, the now-Minister responded to another parliamentary question regarding the LRB backlog. A copy of the response is annexed marked “MN9”. While the question explicitly asked what steps were being taken by the DHA to reduce and eradicate the LRB application backlog, the Minister focused only on the DHA's attempts to improve early registration of birth in his answer. No mention was made of what progress was being made within the department regarding the actual backlog of undecided LRB applications.

115. The response noted that:



“(a) The Department initiated a process to address and reduce Late Registration of Birth (LRB) through the following steps:

- i. By reviewing the legislation that deals with Late Registration of Birth.
- ii. This was followed by stringent measures for those whose who visited the department to apply for this category of birth registration.
- iii. Hereafter a campaign was launched to further emphasise the importance of birth-registration within 30 days. This was ramped up with the deployment of mobile units to far-flung rural areas for birth registration services.

(b) For the Department to completely eradicate LRB's, an Optimisation rollout strategy was developed to automate the birth registration process in ensuring connectivity and automation at health facilities. The Department has entered into a memorandum of understanding (MOU) with the Department of Health (DOH) to ensure that each child is allocated with a birth certificate on the spot, by registering birth at health facilities. The objective is to have all health facilities connected to Home

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Affairs systems in ensuring that all births which occurred at a health facility are registered before discharge and within 30 days as prescribed in the Births and Deaths Registration Act 51 of 1992 (amendment Act, Act 18 of 2010). The DHA will continue to expand access to services at health facilities with maternity wards over the medium term. Concerted efforts will be made to encourage the public to register births and deaths at hospitals in order to release pressure on conventional DHA offices. The plan was based on birth occurrences per health facility. The plan in this regard is staggered over a 5-year period and is envisaged to be completed by 2024/25. The early registration of birth will also reduce the need for late registration of birth applications. It is thus expected that this plan will ultimately assist in addressing challenges with birth registrations."



116. A month later, the Minister replied to another parliamentary question. The response is annexed marked "**MN10**". The Minister had been asked whether his department "has any measurable target plans" to address, amongst other things, "the persistence of backlogs in the issuing of [...] birth certificates".
117. Concerningly, the Minister replied that "there is no backlogs for issuing birth certificates". That is manifestly incorrect. The rest of the Minister's answer repeated the answer given in response to the parliamentary question dated 5 August 2024, quoted above.
118. It makes little sense that within the space of a month, the DHA's would contradict itself on the existence of a LRB backlog. It is certainly impossible that in the space of a month, the DHA successfully cleared the backlog. The Children's Institute and its clients know first-hand that a backlog exists, and

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the applicants before this Court remain caught in that backlog despite having given notice of birth years ago.

119. Not only are the second to fourth and sixth to ninth applicants' applications still outstanding but as of the date of signing this affidavit, the Children's Institute has other children and young adults with undecided LRB applications on its caseload. Attached to this founding affidavit are supporting affidavits from seven caregivers caring for nine children, annexed as "MN11", "MN12", "MN13", "MN14", "MN15", and "MN16" as well as the affidavit of an adult caregiver seeking to apply for her birth certificate to enable her to apply for her three children's birth certificates, annexed as "MN17". They have all lodged applications for LRBs and have been waiting unreasonably long periods of time for DHA to decide on their applications. These clients make up the applicants in Annexure A that is attached to the Notice of Motion.
120. The Children's Institute is being approached on a weekly basis by more caregivers who have lodged applications for their children's LRBs, have receipts and have been waiting unreasonably long periods of time for DHA to decide on their applications.
121. The Children's Institute is also assisting caregivers who have attempted to lodge LRB applications for their children but have been turned away due to the backlog.
122. So, there is no plausible possibility that the Minister's answer, to the effect that there is no backlog, can be correct.



123. More realistically, it would appear from these answers that the Honourable Minister is not aware of the existence or the extent of the LRB backlog located at DHA local offices. It is also possible that the Minister somehow misunderstood the question posed. Unfortunately, the end result of either of these explanations is that the Minister failed to provide a full truthful answer to the questions posed by Members of Parliament.

124. It is clear from these parliamentary answers, and the experiences of the second to ninth applicants, and the seven caregivers with supporting affidavits, that the DHA has no apparent plan, or even intention to develop a plan, to address the backlog of undecided LRB applications.



125. While it is desirable to increase the number of children whose births are registered within 30 days of their birth, it is unrealistic and irresponsible of the respondents to neglect the reality that for many parents and caregivers, early registration is unfeasible, and that for many children and young adults, late registration is their only option to obtain a birth certificate and identity.

126. Equally, the respondents cannot abandon those already in the backlog, who did not or were not able to, for whatever reason, give notice within 30 days of birth. Those people and their children are constitutionally and statutorily entitled to have their notices of birth decided.

The DHA will always need a system to decide late notices of birth diligently and without delay

127. Whilst it is not a central issue in relation to the relief sought in this application, it is important to note that the DHA's policy to encourage early notices of birth will not eliminate LRB applications.

128. On the contrary, there will always be a need to ensure there is a system for LRB applications to be decided efficiently. The plan which the DHA must put in place will need to ensure that, once the applications in the backlog have been decided, that backlog does not re-emerge.



128.1. The DHA's plan to encourage early registration primarily relies on providing birth registration services in hospitals. However, the DHA's focus is on placing DHA desks at hospitals with high volumes of births. According to DHA's 2024/25 Annual Performance Plan, this approach results in the DHA's accounting for approximately 91.7% of births occurring in public health facilities with maternity wards. The relevant extracts therefrom are annexed marked "**MN18**". This means that not all hospitals or birthing centers will be equipped with DHA desks.

129. However, where there are DHA desks at hospitals, these desks are not always fully capacitated, meaning that they won't always be accessible. In their 2023/24 Annual Performance Plan, the relevant extract annexed hereto as "**MN19**", the DHA acknowledges that for

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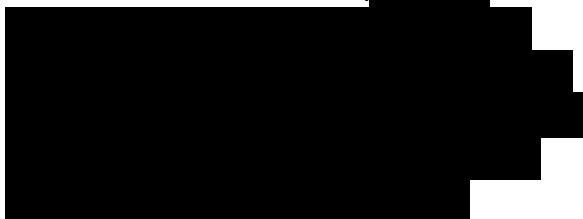
**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

CASE NO: 2024-148658

In the matter between:

The Children's Institute,

Plaintiff / Applicant / Appellant



and

Minister of Home Affairs, Director-General: Department of Home Affairs, Western Cape Department of Home Affairs Provincial Manager, District Manager of Operations: Cape Metro and Overberg, Khayelitsha Office Manager: Department of Home Affairs, Bellville Office Manager: Department of Home Affairs, Cape Town Office Manager: Department of Home Affairs

Defendant / Respondent

Founding Affidavit

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BY:

**Registrar of The High Court,
Western Cape Division, Cape
Town**

the previous financial year only a small number of the health facilities with DHA desks had full-time capacity.

130. And even where desks are fully capacitated, DHA desks in maternity wards are only operational during working hours on weekdays. Some open later in the day due to the DHA officer needing to report to the office before arriving at the health facility. Some have roving DHA officials servicing multiple health facilities. However, babies are born every day and at all hours of the day and night and mothers and babies are generally discharged within six hours. Those who are discharged after hours, on weekends, or on a weekday when the roving DHA official is not present at the facility, are thus unable to make use of the DHA's connected and automated services at hospitals before they leave the hospital. See an extract from a government commissioned evaluation of the Birth Registration system attached as annexure **MN20**. While mothers do have the option to return the next weekday to use the DHA desk, for some this is not possible due to transport costs and the need to care for their newborn



131. In the DHA's October 2024 Budget Vote, the DHA has reduced its target for early registration of birth from 750 000 babies per year to 730 000 because it does not have the budget to pay its staff overtime to enable the DHA desks in the maternity wards to be fully staffed. The relevant extract from the MTBPS is annexed marked "**MN21**".

132. This reduction in the number of babies registered within 30 days for the 2024/25 financial year is likely to increase the number of children in need of late registration of birth services.
133. Even if all maternity wards had fully connected, fully staffed DHA desks that operated 24/7 - there are many other reasons why parents cannot give notice of their children's birth within 30 days and will need access to an efficient LRB system. These include the following:



- 133.1. Some children, especially in isolated rural areas, are not born at healthcare facilities and are born at home. Children born at home are less likely to have POBs and their birth registration is often delayed for this reason, as well as due to the high travel costs in isolated rural areas to the nearest DHA office;
- 133.2. The cultural practices of some families require the mother and child to remain at home following a birth for up to three (3) months, thereby missing the 30-day period;
- 133.3. The cultural practices of some families require a family consultative process before the baby can be named. The mother therefore cannot apply for birth registration until the family consultation has been held and the baby has been named;

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133.4. Many mothers giving birth at health facilities do not have IDs because they are still young [between 15 and 21] and have not yet applied for their IDs. Without their IDs they cannot use the birth registration desk at the health facility. Stats SA's 2023 Live Births Publication reveals that babies born to young mothers under the age of 19 are less likely to be registered within 30 days. A summary of this publication from the Stats SA website is attached as "MN22."

133.5. For example, the third applicant, [REDACTED] was 19-years old when she gave birth and did not yet have her ID. The fifth applicant [REDACTED] was 18-years old when she gave birth and did not yet have an ID. The child of the seventh applicant, [REDACTED] was born to a mother who did not have an ID when she gave birth to [REDACTED] [REDACTED] one of the Children's Institute's additional LRB clients, was 17-years old and did not have an ID when she gave birth to her child, [REDACTED]. Her supporting affidavit is attached to this affidavit [MN12].



133.6. Pre-mature infants and infants in need of intensive care at birth are transferred from the maternity ward to the neo-natal ward and are often only discharged 30 days after birth. Mothers caring for sickly newborns in the neo-natal unit are less likely to register their babies within 30 days;

133.7. Infants abandoned by their mothers at the hospital will also need to use the late registration of birth process as they first need to be determined by a social worker and the Children's Court to be abandoned before the social worker can apply for their birth certificate. As was the case for baby [REDACTED] one of the Children's Institute's additional clients. See the supporting affidavit of [REDACTED] [MN16].

133.8. Infants whose mother's die during or immediately after the birth are also at high risk of their birth's not being registered within 30 days due to their mother having died; as was the case for baby [REDACTED] [REDACTED] whose mother died a day after she was born. Her paternal uncle, Mr [REDACTED] is one of the Children's Institute's additional clients and his supporting affidavit is attached to this founding affidavit [MN14]. While she had a father who could have registered her birth, the DHA desk at the maternity ward would not have allowed him to do so as he was not married to the child's mother and she was no longer alive to confirm his paternity on the birth registration form.



133.9. Mothers may wish to include the child's father's particulars on the birth certificate. If the couple does not have a marriage certificate, the father has to be present at the birth registration desk for his particulars to be included. For example, in the case of the second applicant, [REDACTED] Ms [REDACTED] child's father was working in Cape Town while Ms [REDACTED]

█████ gave birth in Cofimvaba. Ms █████ had to delay the birth registration to travel so that she and her customary law husband could approach DHA together to ensure the father's name was included on the birth certificate.

134. Finally, there is the compounding effect of the DHA's failure to process LRB applications timeously. If the mother herself lacks an ID, sometimes because her own LRB application may still be outstanding, she cannot register the birth of her child. This is evidenced in the supporting affidavits of the fifth and ninth applicants █████ and █████ and in the supporting affidavit of one of the Children's Institute's additional clients, █████ [MN17].



135. For all these reasons and many others, there will always be notices of birth given more than 30 days after a birth. It is quite appropriate then that the legislation and regulations make provision for that late notice and require the State to deal with and decide LRB applications. The DHA must deal both with the existing backlog and with the underlying causes that led to this backlog. Focusing only on encouraging early registrations is incapable of solving the problems.
136. The DHA's failure to focus on the backlog, and to deal with the manner in which it intends to address that backlog and deal more swiftly with LRB applications in future, underscores the need for the structural and supervisory relief which I outline later in this affidavit.

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The manner in which the DHA extenuates the backlog

137. DHA's internal procedures for dealing with LRB applications highlight flaws in how these applications are handled. The plight of the second to ninth applicants in this matter, and the seven additional clients whose supporting affidavits are attached to this founding affidavit, in turn demonstrates the devastating consequences of these flaws.
138. The SOP 2017, in particular, affords a supervisor the responsibility to quality-assure an application in the broadest of terms, with no clear guidance as to what this requires.
139. One could speculate that the lack of clear guidance on how these applications should be verified contributes to the untenable slow pace at which they are decided. Indeed, many of the applicants' experiences bear testimony to the cost of the idiosyncrasies developed by DHA officials over time in verifying LRB applications.
140. At least within the Western Cape, the experiences of several of the applicants indicate that the Western Cape DHA adopts a two-stage approach to verification of POB forms. This approach is not required in terms of the BDRA and Regulations, or even in terms of the policy framework under the SOPs. Despite this, the approach is consistently employed and appears to greatly lengthen the time taken to decide LRB applications and approve notices of birth.



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140.1. In her supporting affidavit, the fifth applicant, [REDACTED] explains that on her sixth visit to the DHA Cape Town office to follow up on her child [REDACTED] LRB application it was explained to her that the departmental officials were still waiting for the Mowbray Maternity Hospital to respond to an email requesting verification that [REDACTED] had been born there.

140.2. When [REDACTED] returned a few months later, the hospital had since responded to the verification request.



140.3. However, the official assisting her explained that they were now waiting for an official from the Wynberg DHA office to go to the hospital to further verify [REDACTED] POB.

141. In addition to this double-verification process, which has no basis in law, the responses provided by DHA officials, to many of the applicants when following up on the status of their LRB applications, reveals that departmental officials often wait years before even starting to verify LRB applications.

142. For example, in her supporting affidavit, the fourth applicant, [REDACTED] explains that:

"It appears that for the first time since I applied, six years ago, the DHA is now only starting to verify the information in the application, and only after intervention by the Children's Institute and Legal Resources Centre.

This means that for six years, my application has been left unattended and no action has been taken to process the application for birth registration for my son.”

143. In addition to the problem of unauthorized double-verifications, and instances of DHA officials taking several years before attending to notices of birth, the DHA has also demonstrated an inability to effectively process LRB applications made across provinces. Where a caregiver tries to register their child's birth outside of the province in which the birth took place, the respondents demonstrate an inability to effectively utilize their resources as a national body to verify the application.



- 143.1. As [REDACTED] explains in her supporting affidavit, she has struggled immensely in finally attaining a decision on her daughter's LRB application. [REDACTED] was born at the Cofimvaba Provincial Hospital in the Eastern Cape. [REDACTED] came to Cape Town to register [REDACTED] birth with her father, [REDACTED] who was working in Cape Town at the time. [REDACTED] both went to the Bellville DHA Office to apply to register [REDACTED] birth.

- 143.2. The obstacles that arose in accepting and processing [REDACTED] LRB application illustrate how DHA offices clearly operate in individual silos across provinces.

- 143.3. First, when [REDACTED] returned to DHA Bellville with a maternity certificate, it was rejected for a simple alleged clerical error. [REDACTED] explains that it

appeared that “the last “2” in 2012 appeared to be written on top of another number”.

- 143.4. Any confusion regarding this error could have easily been resolved had the officials at DHA Bellville followed up with the Cofimvaba Provincial Hospital. In light of the fact that there was a DHA desk at that hospital, this ought to have been easy to do. However, the family was instead left to save up for a year to enable them to travel back to the Eastern Cape to get another copy.



- 143.5. Second, once [REDACTED] LRB application was finally lodged at DHA Bellville, any verification of her details which may have been necessary, should and could have easily been accomplished had there been a clear line of communication between the respective DHA offices in Bellville and Cofimvaba, or between DHA Bellville and the DHA desk in the Cofimvaba Provincial Hospital maternity ward.

- 143.6. Instead, despite clear evidence to the contrary, an official at the DHA offices indicated to [REDACTED] in 2019 that:

“the reasons it might take longer to finalise [REDACTED] application was because health facilities in the Eastern Cape were not responding to their calls or emails to verify proof of birth”

- 143.7. Staggeringly, and despite the fact that both a journalist at the *Weekend Argus* and I were easily able to reach the Cofimvaba hospital on the

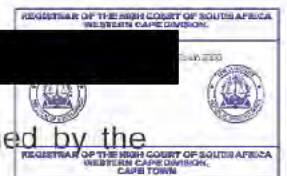
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phone, the official again in 2023 indicated that she had struggled to make contact with the hospital. The articles are attached as **TMM8** and **TMM10** of [REDACTED] supporting affidavit.

143.8. More damning however was the DHA official's indication that she could not get officials from the DHA in the Eastern Cape to travel to the hospital to assist with the verifications.

143.9. Later that same year when I accompanied [REDACTED] [REDACTED] and [REDACTED] to the DHA Bellville we were informed by the [REDACTED] official that:



"Eastern Cape is a rural province, some health facilities do not have access to phones or internet to respond to emails."

144. Notably, [REDACTED] faced none of these difficulties when she gave notice of the birth of her youngest daughter, [REDACTED], using the LRB process. Unlike her sister, [REDACTED] was born in Cape Town at the Khayelitsha District Hospital. Her proof of birth form from the Khayelitsha District Hospital was readily accepted by the DHA when [REDACTED] applied to register her birth on or around July 2015. [REDACTED] application was swiftly processed, and a birth certificate was issued for her on 27 July 2015.

145. [REDACTED] faced similar difficulties when trying to register the birth of her daughter [REDACTED]. [REDACTED] was born in Queenstown, but [REDACTED] applied to register her birth at the DHA's office in Khayelitsha. Officials purportedly

struggled to verify [REDACTED] proof of birth, seemingly because of their inability to communicate across offices.

146. In her supporting affidavit, [REDACTED] explains that:

"On 11 October 2024, I approached Khayelitsha DHA offices, accompanied by Mr Nyathi from the Children's Institute, to follow up on the birth certificate. I was attended by Mr Sandiso Fiyani, a DHA official from the late registration of birth section. Mr Fiyani indicated that he was familiar with my surname as he had received a letter regarding my case. Mr Fiyani looked for my file and after finding it, he returned to me and asked if I have a relative who lives near Queenstown.



I told him that my brother, Mr [REDACTED] lives in Machibini Location near Queenstown. Mr Fiyani then requested me to ask my brother to approach DHA offices in Queenstown to request the DHA office manager's email address and contact number. Mr Nyathi asked Mr Fiyani if Mr Fiyani himself could rather liaise directly with a DHA official stationed in Frontier Hospital since it had a DHA desk at the maternity ward. Mr Fiyani indicated that he needs to request the DHA Office Manager at Queenstown DHA to send a DHA official to Frontier Hospital to do the proof of birth verification.

Mr Fiyani requested me to provide the email address and contact number of the Queenstown DHA Office Manager obtained by my brother to Mr Nyathi so that Mr Nyathi could then send it to him.

It appeared that Mr Fiyani, a DHA official, did not have a contact number or email address for the Queenstown DHA Office Manager. Mr Nyathi has advised me that the Queenstown DHA Manager's contact details are available on the DHA's website. I do not understand why Mr Fiyani

needed me to send a relative to get the Office Manager's contact details.
But I agreed to do as advised."

147. On 14 October 2024, I spoke to an official at the DHA's Cape Town Office about the difficulties some of the applicants were having with registering births from other provinces at DHA offices in Cape Town. The official confirmed that the DHA struggled to verify proof of birth forms because they had no dedicated officials responsible for verifying these documents at health facilities.

148. In the Western Cape, it now appears that some of these applications where children were born outside of the Western Cape, are simply being "closed" by the local offices, or the applicants are told to apply in the Eastern Cape. This is evidenced by Ms [REDACTED] (whose supporting affidavit is attached, annexed as "MN17"), and Ms [REDACTED] (whose supporting affidavit is attached to this affidavit, annexed as "MN23") and Ms [REDACTED] (whose supporting affidavit is attached to this affidavit, annexed as "MN24"), two of the additional clients of the Children's Institute.



149. Ms [REDACTED] application was rejected by the interview committee in May 2024, and she was told that her child's registration was complicated because the child was born in the Eastern Cape. She was then told to apply in the Eastern Cape.

150. On 20 November 2024, while I accompanied Ms [REDACTED] to the DHA office in Khayalitsha, we were told by the DHA official that they are no longer taking applications for LRB for children born outside of the province, due to capacity

constraints. We were advised that they were not able to verify proof of births for people outside of the province. They further advised that some of the LRB applications from people born outside of the province have since been closed and clients were advised to approach the provinces where they were born and to apply for their own birth registration and that of their children in their province of birth. See Ms [REDACTED] supporting affidavit [MN17]

151. On 1 November 2024, the Minister, in response to a Parliamentary question as to why parents with children born in the Eastern Cape are advised by the officials in Western Cape to go back to the Eastern Cape to register the births of their children, responded that this was not the policy of the DHA. According to the Minister, all offices in the Western Cape have been instructed to accept any applications, irrespective of where the applicant was born. All offices in the Western Cape will be informed that if, and when, this practice comes to light, corrective action will be taken accordingly. The question is enclosed as "MN25."



152. It is clear from the response to Ms [REDACTED] application, that the DHA in the Western Cape is still "closing" applications for children born in the Eastern Cape, even after the Minister's answer to Parliament. Apart from the reasoning for the closing of the applications being flawed, it should be noted that DHA cannot just close an application for LRB. They actually have to accept or reject the application. There is no legal basis for closing an application, and once an application has been accepted, the Director-General or his delegate, must make a decision on the application and inform the applicant accordingly.

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153. While this issue is worse in respect of births from outside the province, the official that I spoke to on 20 November 2024, confirmed that the DHA even struggled to timeously verify proof of birth forms from hospitals within the Western Cape because of a lack of designated officials.
154. These difficulties were evident when I accompanied a client to DHA's office in Mitchell's Plain the same day. The client, Ms [REDACTED] who is one of the Children's Institute's additional clients, was asked at which health facility she gave birth. When she indicated that she gave birth at Tygerberg Hospital, she was advised that she should approach Bellville DHA because there is no DHA official from Mitchell's Plain Office that will go to Tygerberg Hospital to verify her child's proof of birth form. The official informed me that Mitchell's Plain DHA only takes LRB applications for children born in or around Mitchell's Plain where DHA officials could easily verify proof of birth forms. For children born in Tygerberg Hospital, the notice of birth would have to be registered at the DHA's office in Bellville as only their officials verify proof of birth forms from the surrounding hospitals, including Tygerberg Hospital. Ms [REDACTED] supporting affidavit is attached to this affidavit [MN24].
155. With effective co-operation between DHA officials and offices in the two respective provinces, and indeed within the Western Cape, many of these hurdles could have been easily avoided.



156. The DHA is ultimately a national body, with its operating procedures set on a national basis. Co-operation between offices across provinces should be well-integrated within the system to assist in processing LRB applications. Without that cooperation and effective inter-provincial planning, there is no scope for effectively addressing the massive backlog of undecided LRB applications.
157. These problems underscore both the need for a comprehensive and coordinated plan that is developed and spearheaded by the DHA at a national level, and the need for this Court to monitor the implementation of that plan.



THE IMPACT OF THE BACKLOG IN DECIDING LRB APPLICATIONS

158. The impact of the backlog in deciding LRB applications is significant and has wide ranging constitutional implications. These impacts are felt not only by those that are already caught up in the backlog, but also by new applicants.
159. Since the DHA is strained by the existing backlog, the swift decisions on new LRB applications are highly unlikely.
160. [REDACTED] supporting affidavit explains that she was informed by the official assisting them at the DHA Bellville office, that the Bellville office:

“had a huge backlog with late registration of birth applications, with over 160 cases that were waiting for an interview.”

161. That same day, [REDACTED] had brought her orphaned grandson to register his birth. However, she was told that:

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"[they] would not be able to apply for [her grandson] [REDACTED] late registration of birth that day when [they] attempted to so, because [the official] was not taking any new applications for late registration of birth due to the backlog of applications for late registration of births already with the Bellville DHA office." (my emphasis)

162. Instead, [REDACTED] was advised to return two months later to file [REDACTED] notice of birth and supporting documents.

163. On 14 October 2024, I accompanied Ms [REDACTED] to the DHA's office in Mitchells Plain to lodge an application for LBR. However, she was advised that they are "closed" for the year and would not be taking any more LBR applications. The official told me and Ms [REDACTED] that they will only accept new LRB applications in the new year.



164. It is apparent then that the backlog of LRB applications not only slows the processing of existing LRB applications, but it also prevents other individuals from filing new applications. This deprives individuals of their ability to register their births, for potentially significant periods of time.

165. Once an application for LBR has eventually been lodged, it appears that the requirement of an interview causes further delays in the process. Applicants often wait years to be called for an interview, as is evidenced by the second to the ninth applicants in this case, and the other seven supporting affidavits. This is incredibly frustrating, particularly, as the relevant statutory framework, and the policies set out in the SOPs, do not require an interview in every

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instance of an LRB application, especially for children under the age of 15 years.

166. I have also been advised by officials from DHA's offices in Khayelitsha and Bellville that the provincial and district managers are required to sit on their screening committees for interviews. As these individuals are very busy, it impacts on how often the panel sits and how many interviews can be concluded.

167. One Khayelitsha DHA official even encouraged me to write emails to the Provincial Manager and the District Manager directly regarding cases of our clients because interview dates were dependent on their availability.



168. As mentioned previously, in the parliamentary question dated 1 November 2024, already attached hereto as **MN5**, the Minister is asked how regularly the interview panel for LRB applications meet to conduct interviews in the Cape Town Metropolitan district, as well as the total number of interviews that are conducted on average per day when the panel meets.

169. In response, the Minister advised that on average, interviews are conducted at least three (3) days per week in the Cape Town Metropolitan District. The total number of interviews that are conducted by the screening committees is between 15 – 30 interviews, bearing in mind that two interviews must be conducted for the category 15 years and above, one with the applicant and one with the informant.

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170. This answer seems implausible in light of the immense difficulties several of the applicants and our clients have faced in securing interviews. Many of them have been waiting years to be contacted regarding an interview. If interviews were being conducted with the levels of consistency alluded to in the Minister's response, such significant delays would be implausible.

171. The answer from the Minister is in direct contradiction with, not only our clients' experiences, but also with what has previously been communicated to us by departmental officials. An official in the Khayelitsha office indicated that the front desk officials were frustrated with the provincial manager as they don't understand why he needs to form part of the screening committee when he could simply delegate that power to other senior officials. They highlighted this as one of the reasons for interviews being unreasonably delayed. Instead, officials were left to try to explain to caregivers following up on their applications for many years that there was a delay in scheduling their interviews without being able to give them any real answers to their questions.



172. If I am incorrect in this view, I invite the respondents to provide the relevant information substantiating this answer.

173. As mentioned above, the answer also reveals that three District Managers chair the LBR process for children between 1 and 6 years old, while the Provincial Manager chairs the committee for children over the age of 7.

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174. Significantly, nowhere in the SOPs does are the provincial or district managers required to sit on the screening committee for interviews. In fact, the wording of the SOP 2017 in relation to LRBs for 15 years and older would suggest that the manager is merely required to appoint individuals to sit on the committee, and not that they themselves are required to sit on the committee for every LRB in the province.

175. Page 8 of the SOP 2017 sets out that:

"The responsible provincial manager must ensure that in their respective offices, officials are appointed as screening committee members annually (per financial year). The screening committee consists of: chairperson, secretary, immigration officer (for 15 years and above), additional member."



176. The pace and frequency of these interviews clearly do not keep up with the pace of new applications and do not appear to do much to address the backlog. Even if the Minister answer is correctly reporting on the number of interviews conducted on average each week, the rate at which interviews are being conducted remains demonstratively inadequate at addressing the immense backlog.

177. The impact occasioned by the failure to decide on LRB applications timeously is significant.

177.1. First, the older a child is when they apply to have their birth registered, the more arduous the application process may be.

177.2. As we know from the affidavit of [REDACTED] children over the age of 7 are required to provide two verified documents when lodging their LRB application. This, I note, is not a requirement of the statutory or regulatory framework, and the Children's Institute considers it an unlawful imposition which should be excluded in the plan which the DHA must develop to address the backlog.



177.3. In any event, the impact of the imposition of heightened requirements for children over 7 is that, if children are being turned away by the DHA then, as more time passes, those children run the risk of having to comply with stricter registration requirements and provide additional supporting documents when their notice of birth is finally considered, potentially lengthening the time it would take to process their applications.

177.4. This is illustrated by the case of [REDACTED] Her great aunt, the eighth applicant, [REDACTED] explains in her supporting affidavit that because of the DHA's delay in deciding her LRB application, she was called upon to supplement her LRB application years after lodging it.

177.5. When the application was lodged, [REDACTED] was just five years old and not of school-going age. Ms [REDACTED] explains that when she

followed up on her application at the DHA's office in Khayelitsha on 10 October 2024, she was advised that she needed to provide a school form and a copy of the extract of [REDACTED] school admission register. This was because [REDACTED] was now over 7 years old and of school-going age.

177.6. Second, forcing children to wait longer to register their births deprives them of identity documents, either in the form of a birth certificate and additionally an ID if the child is over 16. These documents are often required to allow the child to access a variety of goods and services, including those to which they are constitutionally entitled.



177.7. Consequently, the systemic failure of the DHA to decide on LRB applications has far reaching constitutional consequences, often resulting in persons, and most often children, being deprived of a range of constitutional rights.

177.8. One example is the right to social assistance.

177.9. While Regulation 13(1) of the Social Assistance Act 13 of 2004 does allow for parents to apply for child support grants using alternative documents, this regulation is poorly publicized and often incorrectly administered by officials.

177.10. As explained in her affidavit, [REDACTED] inability to swiftly obtain a birth certificate prevented her from obtaining a social grant

for her great niece, [REDACTED] to assist her in meeting [REDACTED] needs for the first seven years of [REDACTED] life.

177.11. Similarly, in her affidavit, [REDACTED] explains she was unable to apply for a child support grant for her daughter [REDACTED] for almost two years without a birth certificate. However, [REDACTED] explains further that:

"Even with the assistance of the Children's Institute, I faced difficulties in applying for the [child support grant] without [REDACTED] birth certificate at Wynberg SASSA despite my entitlement to social assistance in terms of the law. [REDACTED] from the Children's Institute had to call the Office Manager to intervene after SASSA officials had turned me away."



177.12. [REDACTED] the seventh applicant, has been unable to apply for and access a disability grant which she is entitled to because of her undocumented status. She explains in her supporting affidavit that:

"I have a chronic illness and a disability [REDACTED] and I cannot work and earn an income for this reason. I also suffered a stroke when I was pregnant in 2011, and this affected my ability to speak. I am eligible for and should be receiving a Disability Grant of approximately R2200 per month, however, I have been unable to apply for the grant due to not having an ID. The doctors at Khayelitsha Day Clinic have required me to provide an ID document before they will write me a referral letter to take to SASSA (South African Social Assistance Agency) to apply for the grant."

177.13. The right to health is also implicated.

177.14. [REDACTED] mother and grandmother have both struggled to ensure [REDACTED] access to proper medical care because of his undocumented status. In her supporting affidavit, [REDACTED] explains that:

"In 2023, [REDACTED] grandmother] approached Lotus-River Hospital with [REDACTED] as he has dental problems and the dentist at Lotus-River Hospital recommended braces for [REDACTED] teeth. However, the doctor was unable to assist further without the birth certificate. My mother and [REDACTED] were referred to the Mitchell's Plain Hospital, and again, the dentist in Mitchell's Plain was unable to assist without a birth certificate."



177.15. In her supporting affidavit, our client [REDACTED] also describes the difficulty she has experienced in registering [REDACTED] on her medical aid as a dependent as [REDACTED] does not have a birth certificate.

177.16. The right to education may also be impacted. [REDACTED] was not able to access an early childhood development centre due to not having a birth certificate. Mr [REDACTED] oldest child was asked to leave a school after three months due not having a birth certificate. Ms [REDACTED] and Ms [REDACTED] children were excluded from participating in sporting events at school due to the absence of a birth certificate.

177.17. Third, the longer LRB applicants are left without the proper documentation, the greater the chance of them being left unable to register the births of their own children. If an applicant has a child while they are left waiting for their LRB application to be processed, without the necessary identity documentation, they cannot proceed with registering the birth of their child.

177.18. As [REDACTED] and [REDACTED] explain, they have been unable to register the births of their five children and acquire birth certificates for them as they are still waiting for their own birth to be registered.



177.19. Registering their children's births is dependent on the finalization of their own LRBs applications to allow them to apply for an ID.

178. There are also further hardships and vulnerabilities children face without birth certificates. As [REDACTED] explains, her and her husband have faced great difficulty in trying to adopt [REDACTED] who has been placed in their foster care. They have been unable to proceed since starting with the adoption process in June 2023 as [REDACTED] does not have a birth certificate. In her supporting affidavit, [REDACTED] explains that she has been unable to lodge a claim for maintenance against her daughter's father because no decision has been taken regarding her daughter's LRB application. She lodged an application to register [REDACTED] birth on 12 May 2023.

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179. The failure to decide LRB applications, which is widespread and has resulted in a backlog of hundreds of thousands of applicants, has far reaching and unconstitutional impacts. The failure to decide swiftly, and to treat the applications in accordance with the prescripts of the Constitution, the BDRA, and the Regulations, is unlawful in and of itself. However, it also has a dire and unconstitutional knock-on effect, which must be effectively planned for and addressed.

180. With that context and impact in mind, I turn to the reviews of the failure to decide the LRB applications of the second to the fourth and the sixth to the ninth applicants, before outlining the relief which the applicants seek in this Court.



REVIEW OF THE FAILURE TO DECIDE THE APPLICANTS' APPLICATIONS

181. I am advised that the decisions made by the DHA regarding LRB applications, and particularly decisions on whether to approve a late notice of birth, constitute administrative action as defined in section 1 of PAJA.

182. The definition of a "decision" in section 1 of PAJA includes not only decisions taken by an administrator, but also the failure or refusal of an administrator to take a decision as required of them in terms of an empowering provision. Section 1 says that 'decision' means:

“any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-

...

- (a) making, suspending, revoking or refusing to make an order, award or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a license, authority or other instrument;

... ; or



- (g) doing or refusing to do any other act or thing of an administrative nature, and a reference to a failure to take a decision must be construed accordingly”

(my emphasis)

183. PAJA defined ‘administrative action’ to include “any decision taken, or failure to take a decision...”
184. Accordingly, where a failure to take a decision is unlawful, procedurally unfair, or unreasonable, that failure also constitutes an administrative action susceptible to review under PAJA.
185. In addition, every exercise of public power, including the failure to take a decision, is subject to the rule of law and the principle of legality. The import is

that the DHA's failure to take a decision, even if it were not subject to PAJA, would be reviewable if it were found to be unlawful or irrational.

186. The failure to decide the second to fourth, and sixth to ninth applicants' applications is unlawful and subject to review in terms of section 6(2)(g) read with 6(3) of PAJA.

187. Section 6(2)(g) of PAJA provides that a court or tribunal has the power to judicially review administrative action if the action concerned consists of a failure to take a decision.



188. Section 6(3)(a) of PAJA in turn provides that, where an administrator is under a duty to take a decision and has failed to do so, and the law in question does not prescribe a time period within which the decision must be taken, the failure is reviewable on the basis that there has been an unreasonable delay in taking the decision. The failure to decide the second to fourth, and sixth to ninth applicants' applications is reviewable under this provision.

189. First, the DHA, through the second respondent or his delegate, as envisaged on section 4 of the BRDA, have a duty to decide LRB applications.

189.1. As I have explained, section 9(7) read with section 4 of the BDRA, read with the Regulations and the relevant constitutional rights, obligates the DHA, through the second respondent or its delegate, to reach a decision on all LRB applications they may receive in terms of the BDRA.

- 189.2. Regulation 6(3) of the Regulations provides that the “Director General must, in respect of each notice of birth contemplated in regulations 3, 4 and 5, authenticate the veracity of the information furnished to him or her and either approve or reject the notice.” (my emphasis).
- 189.3. Regulation 6(1) provides that upon approval the Director-General must issue a birth certificate (or an acknowledgment of receipt if for any reason the certificate cannot be issued immediately). (my emphasis).
190. Second, no decisions have been taken on the LRB applications of the second to the fourth, and sixth to ninth applicants.
191. Third, there has been an unreasonable delay in deciding the LRB applications of the second to fourth, and sixth to ninth applicants.
192. As I have noted, the BDRA and Regulations do not prescribe a time frame for the finalisation of these applications.
193. The closest to any prescribed timeframe is in the policy framework represented by SOP 2017, where the DHA indicates that decisions regarding the LRB applications for individuals over the age of 15 years should be reached within 180 days of receipt of application.
194. While this does not constitute a timeframe prescribed in law, this timeframe ought to assist in establishing what would constitute an outer limit of reasonable amount of time for the finalizing of LRB applications.



195. The SOPs are both silent on the timeframe relevant to applications for children younger than 15 years old. However, it would make little sense if these applications should reasonably be expected to take longer to process.

195.1. First, because of their youth, children below the age of 15 are more vulnerable than children over the age of 15. Remaining unregistered and undocumented compounds this vulnerability. Consequently, it is only reasonable that the LRB applications of younger children should be finalized before those of older individuals.



195.2. Second, according to DHA's policies, the LRB applications of younger children, particularly those below the age of 7, require the submission of fewer documents. As there are fewer documents to verify and process in these cases, it makes sense that it again would be reasonable to expect the LBR applications of younger children to be processed faster.

195.3. Third, the SOPs only require an interview to finalise LRB applications for individuals over the age of 15 (though the legislative framework, appropriately, makes interviews only optional in respect of all applicants). As the processing of LRB applications for younger children, under the SOPs, does not require this extra step (though it appears to be uniformly implemented, leading to unnecessary delays),

it would again only be reasonable that their applications should be processed in less than 180 days.

196. What emerges is the following:
197. On the DHA's version, an LRB application for a child older than 15 should be decided within 180 days.
198. It must follow that a delay of more than 180 days would be unreasonable in respect of younger and more vulnerable applicants, where the finalizing of the registration of their births is more pressing (particularly in the case of very young children).
199. Put simply: the fact that the DHA commits itself, in its policy, to deciding applications for individuals older than 15 years within 180 days establishes the unreasonableness of extending beyond such a period.
200. Even if 180 days were not an absolute outer limit, there is no plausible manner in which the actual delays in deciding the LRB applications of the applicants could be construed as reasonable. As reflected in their supporting affidavits:

- 200.1. [REDACTED] LRB application was filed on 20 February 2019. It has been **close to six years** and the respondents have yet to decide her application.



200.2. [REDACTED] LRB application was filed on 24 May 2021. It has been **more than three and a half years**, and the respondents are yet to decide her application.

200.3. [REDACTED] LRB application was filed on 13 March 2018. It has been **more than six and a half years**, and the respondents are yet to decide her application.

200.4. [REDACTED] LRB application was filed on 2 May 2018. It has been **more than six and a half years**, and the respondents are yet to decide his application.



200.5. [REDACTED] LRB application was filed on 20 September 2018. It has been **more than six years**, and the respondents are yet to decide his application.

200.6. [REDACTED] and [REDACTED] LRB applications were filed on 9 March 2021. It has been **more than three and a half years**, and the respondents are yet to decide their applications.

200.7. [REDACTED] filed her LRB application on 6 January 2022. It has been **close to three years** and the respondents have yet to decide on her application.

200.8. [REDACTED] LRB application was filed on 1 February 2022. It took **close to three years** for the respondents to decide on her application.

201. These delays are patently unreasonable. They are all several fold longer than what the DHA itself considers the outer limit for deciding applications in respect of older children and majors. Some of the applicants have been waiting more than 6 years, in circumstances where applicants older than 15 are supposed to have their birth certificates within 6 months.

202. Consequently, the respondents' failure to take decisions on the **second to fourth, and sixth to ninth** applicants' LRB applications falls to be reviewed and set aside in terms of section 6(2)(g) read with section 6(3) of PAJA.



203. In addition, the failure to decide the applications made by the second to fourth, and sixth to ninth applicants is also reviewable in terms of section 6(2)(i) of PAJA, in that the failure is unconstitutional.

204. I have outlined the rights in the Bill of Rights and the governance duties imposed on the DHA by the Constitution, which render it unconstitutional to fail, for several years, to take a decision on LRB applications.

205. Equally, I have highlighted DHA's constitutional duty to perform its obligations diligently and without delay.

206. As established above, the consequences of the respondents' ineffective processing of LRB applications and the backlog occasioned by their

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inadequacies has several significant and detrimental consequences. Furthermore, the respondents' failure to effectively implement a suitable plan to ensure the swift processing of LRB applications and address the backlog, violates several constitutional rights.

207. The existence of an LRB backlog and ineffective processing procedures within the DHA hinders the registration of the births of hundreds of thousands of individuals. Without the registration of their births, these individuals remain undocumented, without any formal proof of their identity, including their name and nationality.



208. This limits the right of every person to a name and nationality is enshrined in section 28(1)(a) of the Constitution.
209. As proof of identification is often a prerequisite for accessing other socio-economic goods and services, individuals without proof of identity are also prevented from accessing a multitude of other socio-economic rights as outlined above.
210. Undocumented individuals are also likely to suffer at the intersection of a multitude of different vulnerabilities and inequalities because of their status. Without proof of identity, it is harder for individuals to register and work their way through the schooling system. A lack of documentation also makes it harder for individuals to operate within the formal economy.

211. These vulnerabilities are amplified by the further difficulties and complications undocumented individuals face in trying to access the socio-economic goods and services that make up South Africa's social security net. Undocumented individuals will inevitably find themselves pushed further and further to the fringes of society by much of the regulatory machinery relevant to the organizing of society, negatively impacting their rights to equality and to human dignity, enshrined in sections 9 and 10 of the Constitution.

212. The delay in deciding LRB applications also primarily affects children. In terms of section 28(2) of the Constitution, the best interests of the child are considered to be of paramount importance in all matters involving the child.



213. This requires that special care and attention be given to ensure the effectiveness of measures that are adopted to give effect to the rights of children and that, in all situations involving children, great care is taken to protect the interests of all affected children.

214. The respondents' failure to prioritize and address the LRB application backlog is a clear example of the respondents falling short of this expectation. The experiences of the other applicants clearly illustrate the respondents' failure to optimize its available personnel and resources to ensure that the LRB applications of children can be quickly verified.

215. Failing to decide LRB applications for periods of more than six years demonstrates a clear failure by the respondents to ensure its LRB service embodies the basic values and principles governing public administration in

terms of section 195(1) of the Constitution, and a failure to comply with the duty to perform constitutional obligations diligently and without delay.

216. In light of this, the failure to decide the second to fourth, and sixth to ninth applicants' applications is unconstitutional and reviewable on that basis.

217. Similarly, the failure to decide on the applications made by our other clients, listed in Annexure A attached to the Notice of Motion in this matter, is also unconstitutional and reviewable on a similar basis given the delay present there.



THE APPROPRIATE RELIEF

218. This application seeks both individual relief for the second to fourth, and sixth to ninth applicants and the clients Annexure A attached to the Notice of Motion in this matter, as well as broader structural relief with respect to the LRB backlog and LRB system.

219. The latter will assist in helping similarly situated individuals whose applications are currently stuck in the LRB application backlog or may become stuck in the near future.

The Review Relief

Prayers 1 and 2

220. As detailed above, the second to fourth, sixth to ninth applicants, and the clients listed in Annexure A attached to the Notice of Motion in this matter have been waiting for between two to more than six years for the DHA to decide their LRB applications. I have shown that the failure to decide their applications is reviewable under the principle of legality, and in terms of section 6(2)(g) read with section 6(3) of PAJA. It is also reviewable under section 6(2)(i) of PAJA.

221. I am advised that this Court has broad remedial discretion to make any order that is just and equitable in a matter such as this which raises constitutional issues in terms of section 172(1)(b) of the Constitution. I am further advised that, in terms of section 8(2) of PAJA, a just and equitable order in circumstances where a failure to take a decision has been reviewed and set aside may include:

- 221.1. Directing the relevant decision-maker to make the necessary decision;
- 221.2. Declaring the rights of the parties in relation to the taking of the decision; and
- 221.3. Directing any of the relevant parties involved to do or refrain from doing anything which the court considers necessary to do justice between the parties.

222. I understand that the ordinary relief in the case where an administrative action is reviewed is to set aside that action, and to remit it to the decision maker. In prayer 1 of the notice of motion, the applicants ask for this relief.



223. Where the action consists of an unlawful failure to take a decision, it is often appropriate to direct that all necessary steps toward taking the decision, and the decision itself, be finalised within a specific period.
224. In light of the immense delays in deciding the LRB applications of the second to fourth, and sixth to ninth applicants as well as other similarly placed individuals, the applicants contend that such a direction is both appropriate and necessary.



225. Accordingly, in prayer 2 of the notice of motion, the applicants ask for an order remitting both the applicants' LRB applications and the applications made by the clients listed in Annexure A attached to the Notice of Motion in this matter to the second respondent, or his delegee, and directing the taking of all necessary steps to consider and decide each of the late registration of birth applications, and the deciding each of those applications, within 30 days of the date of service of the Court's order.

Relief in relation to the backlog in undecided LRB applications

226. In order to deal with the unconstitutional and untenable backlog, the applicants seek two forms of relief.
227. First, the applicants ask the Court to declare that section 28(1)(a), read with sections 28(1)(c), 28 (2), 9, 10, 27, and 29 of the Constitution requires the State to devise and implement a comprehensive and coordinated plan to

address the current backlog in deciding applications for the late registration of births.

228. Second, the applicants ask the Court to direct the first respondent to develop that plan, and to judicially supervise the finalization and implementation of that plan.

Prayer 3

229. The declaratory relief sought is necessary in order for this Court to clarify the import of the State's duties when it receives a notice of birth, whether that notice is within 30 days or later. It appears from the facts set out by the applicants, and the scope of the backlog itself, that the State requires judicial guidance on this score.



230. The right to birth registration is an implied right under section 28(1)(a) of the Constitution, and the respondents' failure to timeously perform in terms of their obligations flowing therefrom amount to a clear violation of the right in question.
231. Granting declaratory relief to this effect would not only reflect the Courts' findings on this matter and the connection between the BDRA and the rights of children under the Constitution, but also provide the respondents with guidance regarding the scope of their obligations under section 28(1)(a) and 28(2) of the Constitution, and the related rights that a registration of birth unlocks.

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232. Accordingly, a declaratory order of this nature clarifies that the respondents not only have the constitutional obligation to provide birth registration services, but also to ensure that they reach a decision regarding all birth registration applications timeously, and to appreciate the need for a reasonable plan to do so.

Prayers 4, 5 and 6

233. The applicants ask the Court to direct the first respondent to develop and finalise the plan to address the backlog in undecided LRB applications, and to report to the Court on the progress in implementing that plan.



234. This additional relief is, in the applicants' submission, the only viable way to address the massive backlog and the range of constitutional violations it occasions.
235. As canvassed above, the impact of the respondents' failure to timeously decide outstanding LRB applications extends far further than just the eight other applicants in this matter. At a conservative estimate, approximately 258 000 other individuals are still waiting for the respondents to reach a decision regarding their LRB applications.
236. That translates into approximately 258 000 families who are placed in a precarious situation because of one of their family member's undocumented status. As explained above, without a birth certificate, many individuals and

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families may be left unable to access grants that they would otherwise be entitled to. In instances where applicants have children while still waiting for their application to be finalized, they cannot register their children's birth until their own application is finalized.

237. Despite the severity and scale of the LRB backlog, the respondents have demonstrated a history of recalcitrance in dealing with what is an entirely foreseeable issue which we believe justifies further broader relief.



238. The supporting affidavits indicate that the applicants have consistently sought to engage the respondents on issues relating to the processing of their LRB applications, to no avail. As detailed in [REDACTED] supporting affidavit, her family's difficulties in registering [REDACTED] birth even garnered media attention, see the two articles annexed to [REDACTED] supporting affidavit as **TMM8** and **TMM10**. However, even the then-Minister's spokesperson's public promise that [REDACTED] application would be promptly finalized came to naught.

239. The Children's Institute has attempted to engage the respondents on these issues countless times over the last few years. As detailed in the supporting affidavits, it has assisted the second to ninth applicants in their engagement with the DHA. The Children's Institute has also written to the respondents on behalf of the applicants several times. However, it has received no substantive response from the DHA. These letters are annexed as "**MN26**" and "**MN27**".

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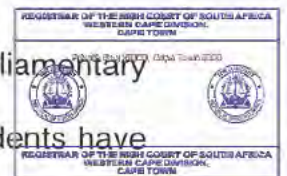
240. In all of these letters, the Children's Institute has highlighted the plight of the applicants. Each letter detailed how the relevant applicant had successfully lodged their LRB application and sought to demonstrate the difficulties they had subsequently experienced in following up regarding their applications. Ultimately, the applicants had heard nothing from the DHA for years and the only time they were informed of anything regarding their applications was when they had attempted to follow up with departmental officials. In all these letters, we demanded that the DHA reach a decision regarding their LRB applications.



241. The Children's Institute's attorneys subsequently wrote to the new Minister on 4 July 2024 on behalf of the applicants, in a letter which is annexed hereto marked "**MN28**". Our attorneys again demonstrated the difficulties the applicants had faced in following up on their LRB applications. They established that the respondents' failure to decide the LRB applications was marred by unreasonable delay and thus consequently reviewable. Another letter was sent to the Minister on behalf of the Fifth Applicant on 24 October 2024, annexed hereto marked "**MN29**".

242. In both letters, the Children's Institute also highlighted the need for the DHA to develop and implement a plan to reduce the LRB backlog. To this end, our lawyers communicated our willingness to meet with the DHA to discuss what measures could be adopted to reduce the backlog and increase the DHA's efficiency when processing LRB applications.

243. However, these letters too went unanswered.
244. Throughout all our correspondence with the respondents, we have highlighted the significance of the LRB backlog and its broad impact. Moreover, the LRB backlog is an issue of which the respondents are aware, having had to collate the evidence from all their local offices to provide an answer to the 2023 Parliamentary question.
245. However, as demonstrated through their responses to the parliamentary questions posed to the Minister of the last two years, the respondents have elected to focus all their efforts on encouraging early birth registration as the only means through which to address the LRB backlog and blame the LRB backlog on individuals like the applicants rather than acknowledging the weaknesses in their system.
246. The experiences canvassed above and detailed in the supporting affidavits filed along with this affidavit, point to several inefficiencies on the part of the respondents in implementing their SOPs which greatly lengthen the time taken to finalize LRB applications. Certain offices appear to duplicate efforts in verifying LRB applications. Moreover, the respondents struggle to verify applications interprovincially. Despite the respondents having the necessary institutional infrastructure already in place across provinces to assist in this process, they have no discernible plan or approach in place to assist in these situations.



247. The respondents currently appear to process LRB applications in an entirely unproductive manner. Moreover, there is no clear uniform approach to processing these applications in place. The respondents' poor approach to finalizing individual LRB applications is compounded by the lack of an overall strategy for addressing the LRB backlog.

248. Consequently, the broader systemic and supervisory relief sought by the applicants in this application is justified and necessary, and constitute just and equitable relief. Without it, there are no prospects for a swift and efficient clearing of the backlog, which is an essential precondition for the promotion and fulfillment of the constitutional and statutory rights of the individuals and families sitting in that backlog. The respondents' conduct has made it necessary for the court to step in and direct the respondents to take the necessary steps to prioritize and clear the LRB backlog.



249. In light of the foregoing, in prayer 4 of the notice of motion the applicants accordingly seek an order compelling the first respondent to develop and implement a plan to decide all the applications in the LRB backlog and to prevent it from expanding again. And in prayer 5 the applicants seek an order compelling the first respondent to report to this court on the progress made in implementing this plan every 90 days for a 360-day period.

250. In asking this court to direct the first respondent to develop and implement a strategy to decide all the applications in the LRB backlog, the applicants do not seek to dictate what the contents of that strategy should be. Instead, they

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leave such decisions entirely in the hands of the respondents, save only to require that the strategy addresses certain key issues such as a diagnostic of the blockages in the processing pipeline, a plan to address these blockages, how its implementation will be resourced, timelines for implementation, and a clear methodology for implementation.

251. Exactly how these issues are to be addressed is left open to the first respondent to decide, provided the plan is reasonable, comprehensive and constitutionally sound.



252. This relief, in fact, mirrors the type of approach the DHA already appears intent to adopt in addressing other types of backlogs. Its March 2023 presentation on various application backlogs, addressed above, contained detailed pipeline diagnostics in respect of all their identified backlogs (but omitted the LRB applications backlog). These pipeline diagnostics assisted in identifying bottlenecks and other obstacles in the processing of the relevant backlogs which assisted DHA in formulating the plans and strategies they adopted to reduce other backlogs.

253. In effect, all that the applicants seek is to compel the DHA to adopt the same type of planning in respect of the LRB application backlog, which they inexplicably failed to do at the time.

254. In order for the plan to address the backlog to be effective and reasonable, it will be required to be updated with current information from time to time. It will also be necessary for the first respondent to report to Court on the

implementation of the plan, and for the applicants to be given the opportunity to respond to those reports if necessary.

255. The applicants will accordingly argue that the first respondent should deliver reports to the Court, on affidavit, at 90-day intervals, for a period of 360 days following the date of this Court's order, and that these reports must at least include the following information:

255.1. the total number of undecided LRB applications as at the date of the institution of this application, that the Department of Home Affairs has at its head office and at each of its local offices;



255.2. the total number of undecided applications that were lodged prior to the date of the institution of this application and that have been decided at the time of the relevant report, disaggregated by the year in which they were lodged and the province in which they were lodged, as well as the total number of those decided applications that were approved and the total number that were rejected;

255.3. the total number of undecided applications that were lodged prior to the date of the institution of this application, and that have not been decided at the time of the relevant report, disaggregated by the year in which they were lodged and the province in which they were lodged;

255.4. the total number of new LRB applications received after the date of the institution of this application to the date of the relevant report, disaggregated by the year, month and province in which they were lodged and a breakdown of this total into:

255.4.1. the number of those applications that have been decided and the number that have not yet been decided;

255.4.2. of those applications that have been decided, the total number that were approved and the total number that were rejected.

255.5. The estimated timeframes for the elimination of the remaining backlog;

255.6. Any constraints that may have arisen that may prevent the respondents from meeting their desired timeframes for the implementation of their plan; and



255.6.1. What solutions or measures have or will be adopted to remedy these constraints.

256. Given the unfortunate failure of the DHA to show an intention to address this backlog, and the processing bottlenecks that appear to arise (often beyond the legislative framework), it is necessary for the Court to provide ongoing oversight in the finalization and implementation of that plan. The applicants will contend that this oversight role should take the form of the first respondent reporting to the Court, in 90 calendar day increments, on the progress in implementing the plan and addressing the backlog. In light of the extent of the problem, the applicants ask that the reporting continue for a period of 360 days following this Court's order.

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257. In light of the respondents' failings to date, and in order to give effect to this Court's order, it would be appropriate, and the applicants' will contend it would be just and equitable, for the applicants (and any *amicus curia* that may participate in this matter) to have an opportunity to comment on the first respondent's reports if necessary, and to re-enrol the matter if it appears that the first respondent is failing to adequately address the LRB applications backlog.

CONCLUSION

258. For the reasons set out in this affidavit together with the supporting affidavits the applicants ask for an order in terms of the Notice of Motion to which this affidavit is attached.

259. If the Court is not inclined to grant relief, I note that the applicants are manifestly making a *bona fide* effort to realise and vindicate constitutional rights in litigation against the State and ought not to be ordered to pay any of the respondents' costs.

Signed at Athlone SAPS on this the 12 day of December 2024.



MBONISI RODNEY NYATHI

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was

signed and affirmed before me at Athlone SAPS, WESTERN CAPE on this
the 12 day of December 2024, and that the regulations
contained in the Government Notice R1258 of 21 July 1972, as amended, have been
complied with.

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Aashiq Leeman CS1
Leeman, A

COMMISSIONER OF OATHS

Aashiq Leeman
Constable

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