

COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE
INEFFICIENCY IN KHAYELITSHA AND A BREAKDOWN IN
RELATIONS BETWEEN THE COMMUNITY AND POLICE IN
KHAYELITSHA

Public Testimony of Ms Phumeza Mlungwana

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COMMISSIONER: Good afternoon everybody. Ms Mayosi this is your witness. You have clarified with her that she has no objection to her name being made public and her evidence being made public, is that correct?

MS MAYOSI: That is so Madam Chair.

COMMISSIONER: Alright, thank you.

MS MAYOSI: The witness will give her evidence in English.

COMMISSIONER: Sorry?

MS MAYOSI: She will give her evidence in English.

COMMISSIONER: Excellent! Good thank you. Ms Mlungwana, thank you very much for participating in the work of the Commission. We are very grateful to you both for the very thorough statement that you presented with the annexures but also for the fact that you are here this afternoon.

MS MLUNGWANA: Thank you.

COMMISSIONER: I would like to put you under oath. Do you have any objection to taking an oath?

MS MLUNGWANA: No.

PHUMEZA MLUNGWANA: (Sworn states)

COMMISSIONER: Thank you very much. Ms Mayosi.

MS MAYOSI: Thank you Madam Chair.

EXAMINATION BY MS MAYOSI:

Phumeza you made a statement to the Commission in November 2013. Is that correct?

MS MLUNGWANA: Correct.

MS MAYOSI: And you have that statement in front of you?

MS MLUNGWANA: Yes.

MS MAYOSI: Do you still confirm that the contents of this statement are true and correct?

MS MLUNGWANA: Yes, they are correct.

MS MAYOSI: Okay, in what capacity have you made the statement to the Commission?

MS MLUNGWANA: I made the statement in my capacity as the member of the Social Justice Coalition who ascribe to the Constitution and values of the organisation; as a political head of the organisation the general secretary since 2013 and as a resident of Khayelitsha who has lived in Khayelitsha for all my life and for the benefit or the interest of myself, my family, my friends, my neighbours and the people of Khayelitsha at large.

MS MAYOSI: Thanks. You say in your statement that you live in Site B in Khayelitsha. You have lived in Khayelitsha all your life, is that correct?

MS MLUNGWANA: Yes that is correct.

MS MAYOSI: Can you describe the kind of dwelling you live in, informal / formal, can you take us through?

MS MLUNGWANA: I was born in 1989. My mother and my father were living in K-Section in a one-room shack and close to when I was a year our shack burnt down and my parents moved to my uncle's house in L-Section, which is also in Site B and that is where I stayed for all my life. L-Section is a semi-formal area with each house on its own plot with a toilet outside the house; houses made out of zinc, with a tap, and upon growing up there were breakaways between the houses but on growing up there was development of roads where roads were replaced with road infrastructure like tar roads. There was development of electricity as I grew up where each house was installed with electricity and in 2002 my parents qualified for an RDP house and our house was replaced with a brick house and which we entered in 2003 and now we stay in a house with a toilet inside with water, electricity, but there are still some houses within the vicinity that will still continue to be built.

MS MAYOSI: Alright tell the Commission briefly about what the SJC does.

MS MLUNGWANA: The SJC is a social movement. We are a membership organisation based in Khayelitsha. We formed in 2008. We strive to promote the rule of law; promote accountability and transpiring governance but promote active citizenship where communities are able to stand up for their rights and use the law in order to advance their social standing. We do that in different forms. We do that through education of our members but also of our communities. We do that through research, office research and community research. We also do that through advocacy employing different forms of communicating with Government. I am talking about protests, petitions, pickets, letters and memorandums and different other forms of communicating with Government and we have two primary campaigns in which we try and communicate our work and one is cleaner, safe sanitation and access to water for everyone and our second major campaign is justice for all.

MS MAYOSI: Where does the SJC get its funding from?

MS MLUNGWANA: The SJC gets its funding from donors. Our funding is public. We have different organisations like the Hivos Foundation, Raith Foundation, Millennium Trust, HBF, Open Society Foundation, French Embassy and different individuals who are interested in donating to the SJC but we also get to apply for a membership you have to pay at least a ten rands membership fee so we'll also get to that and other individuals who are interested in supporting the work of the SJC and we don't take money from Government.

MS MAYOSI: Alright, you say in your statement that the SJC is politically independent. What do you mean by that?

MS MLUNGWANA: The SJC is not politically aligned with any political party. We work with any political party but we also critically or equally criticise each political party that exists for example the African National Congress, the Democratic Alliance. We are able to work with them but we are able to criticise them equally and we do that because most of our members personally in their personal capacities they do support different political parties but the work of the organisation itself it not linked to any political party whatsoever and the vision of the organisation is not influenced by any political party.

MS MAYOSI: Alright. You also say that the SJC has more than 2000 members in eleven branches in Khayelitsha but you mention ten branches in your

statement. What is the eleventh branch?

MS MLUNGWANA: The eleventh branch which is not in the statement is Mfuleni Branch which technically it is outside Khayelitsha so the branches that I have listed in my statement are the branches that are within the boundaries of Khayelitsha.

MS MAYOSI: Okay you also say that the majority of members of SJC live in informal settlements in Khayelitsha. Are you able to tell the Commission how many of the 2000 members live in informal settlements or not?

MS MLUNGWANA: Unfortunately I won't be able to say the exact amount number of people living in informal settlements but what I can tell you is that which of our branches are informal settlements, one of which RR Section is an informal settlement, RR Nyanga is an informal settlement, BM Section is an informal settlement, BT Section is a combination of a formal area and an informal settlement. CT Section is an informal settlement. SST is a combination of both informal area and formal area. Enkanini is an informal settlement. Green Point is a formal, semi-formal area but we do have members from the informal settlement, but the majority of the people are from the formal area. Makhaza branch is a formal area, I mean semi-formal, because it is plots with streets, toilets outside and predominantly RDP houses that have been developed over the years and Monwabisi Park is Endlovini which is informal settlement, so most of our members are people who - the 2000 members is people who are members and belong to a branch; people who have signed a membership form with the SJC and you have to be part of a branch in order to do that.

MS MAYOSI: Do you have any members who live outside of Khayelitsha?

MS MLUNGWANA: Our constitution does not allow members / people who live outside Khayelitsha to subscribe as members but then we list them as supporters, people that support the work of the SJC and different other organisations that we work with outside of Khayelitsha but they are not included in the members who have a say in the governance structure and the development of our campaigns.

MS MAYOSI: What motivated you personally to join the SJC?

MS MLUNGWANA: I have joined the SJC because one, I have always - I guess I have always been an active child. I have always been involved with different initiatives like drama groups, like community-like programmes and I was very interested in the work - at first the work of the Treatment Action Campaign which I was introduced to by two of my cousins. My late cousins actually, who both passed away, Thembakazi and Umedi and they were members, active members of the TAC in New Crossroads and it was very interesting the work they were involved in at that time even though I was very young, but I kept on enquiring as to what is it that I can do and I can be involved in that is close to home and there was a TAC close to home but because I was studying at the same time I needed something that I would be able to do in my spare time and they advised me of different organisations that are around Khayelitsha and SJC was one of them and I kept on asking and one day I went to the SJC office just to enquire as to more on the type of work the SJC is doing and I met two of my - three of my comrades actually, Sfiso, Angie and Axolile Notywala who explained to me what the work of the SJC was and invited me to the branch and I then was there just as an observer to hear what the SJC was doing, participated in the workshops and participated in the marches and I guess I grew a lot of interest

and just interest of participating. It was - I felt like home.

MS MAYOSI: And what does your role as secretary general entail?

MS MLUNGWANA: My role as the general secretary is to - I am elected to be the political leader of the organisation or the political representative of the organisation. I am particularly involved with a lot of policy development within the organisation, liaising and being part of partnerships and networks that the organisation creates; part of Government structure of the organisation and decision making and also integrally involved in campaigns development in the work of each department and also very involved in branches and activities and workshops and educational work and the direction that our campaigns will take.

MS MAYOSI: Tell the Commission why the SJC together with the other organisation complained about crime to the Premier.

MS MLUNGWANA: Specifically our complaint was related to how - the experiences our members and our organisation experienced that the complaints that the police weren't visible enough and that the justice system was not effective enough in Khayelitsha and I say that because we followed a number of cases throughout our campaigns. As I said we have a criminal justice campaign and primarily that campaign we were following specific cases which some people made reference of like cases of Lorna Mlofana or Zoliswa Nkonyana, Makhasandile Qezo and so many others including Ugabo who was sentenced a few years - like a year ago and we have monitored. We have seen how the police failed or not the police specifically but how the justice system failed the victims and their families and how they failed to actually communicate with them properly and how they failed to actually update them on their cases but also to ensure that the criminals who were guilty are convicted but also the people who weren't guilty are then let off and then throughout this monitoring of cases there were many inefficiencies that we have picked up but because of the resources that we had and because there is not many of those offices in Khayelitsha where people can go and get advice on how to lodge complaint and how to follow up on their cases. We felt that our footprint, because we are only focusing on a handful of cases our footprint was very limited and that the lessons we learnt from those cases could be used to get a broader or a broader campaign or a campaign that could even reach people who weren't able to assist because it is not a good feeling when you know people need your assistance and you tell them you don't have the capacity or the manpower to assist them even though you understand the brunt of crime and violence in the community and the injustice they continue to experience.

MS MAYOSI: Why did you choose Khayelitsha specifically for a Commission of inquiry and not other similar areas like say Nyanga or Manenberg?

MS MLUNGWANA: As I said the SJC is based in Khayelitsha. Our membership is primarily based in Khayelitsha and all or most of the complainant organisations. Our footprint and the evidence that we have collected over the years was specifically based in Khayelitsha and the members, when we met the complainant it was not to say we want to make Khayelitsha right. Yes, it was to make Khayelitsha right, but majority of our work has said we need to use Khayelitsha as an example because of the lived experiences that we have but I am aware - I am sure the recommendations and the work of the Commission is not only going to have impact on every challenge; for example in our sanitation work we have campaigned for Khayelitsha specifically for a janitorial service which is going to specifically service public toilets in informal settlements, but

that policy was led by the SJC in Khayelitsha, with evidence from Khayelitsha but the implementation of the policy benefits Cape Town's all so we see it as the lived experiences of people from that community raising their experiences and being active enough to ensure that they develop or they improve the everyday experiences but then it is not just for the benefit of the community.

MS MAYOSI: So in other words you say you chose Khayelitsha because it is the community where you have direct experience but whatever recommendations come from here will benefit other similar communities as well.

MS MLUNGWANA: Correct.

MS MAYOSI: Now when you spoke earlier about the reasons why the SJC and other complainant organisations complained, you said it was motivated not just by what you saw from the police's side but by the entire criminal justice system and yet the other stakeholders at the criminal justice system are not before the Commission so would you say that the SJC has met its objective of establishing a Commission of inquiry to look into the criminal justice system?

MS MLUNGWANA: Yes I believe so. The SJC has met its objectives. When we submitted the complaint to Premier Helen Zille we did quote Section 206 of the Commission and I believe that section deals with police oversight specific and we did get the Commission which was related to the police and the City of Cape Town or Metro Police. We got the terms of reference that we needed even though unfortunately the terms of reference did not include City of Cape Town but we do, like I acknowledge in my affidavit that the City of Cape Town at least it is part of this process and I think we have achieved that.

MS MAYOSI: You say in your statement that most of the members of the SJC and residents of informal settlements believe that the most dangerous thing is to try and use communal toilets to relieve themselves. Can you tell the Commission what you mean by this?

MS MLUNGWANA: Just to give a little bit of like a back-step; when we had - we started with the sanitation campaign mainly and out of educating with communities and hearing that people had challenges with actually accessing toilets and water and challenges with health and the environment and how they felt their dignity was compromised, a lot of issues kept coming up related to safety and that is something from the onset you can't immediately put the relationship between safety and sanitation. A lot of issues, people raised how the toilets were at a distance from their homes and how they had to walk distances to actually access a toilet but sometimes access a toilet and get there, the toilet is not working properly and they are forced to use a bush to use as a toilet because there is no functioning toilet and how especially the elderly people women and children actually feel much vulnerable in how they have to walk the distances to get water and to get actually like toilets and we saw a direct link with how the houses are really structured in informal settlements and how lights / lighting was a big issue and a few in different community meetings people said the toilets themselves don't even have lights so if you have to go to a toilet and you need to carry a cell phone which you are going to need to use in order to get - to see where you are walking, but then that very same act is making you vulnerable to criminals to actually attack because they need that cell phone. We have had some of our members being attacked, people being - for example I make an example of Scara Qezo who was using a bush next to the N2 and Scara was robbed of his cell phone and he was stabbed and there was a lot of people talking about attempted murder and all those testimonies for us

meant actually safety is something bigger than or sanitation is something bigger than just access. We need to go beyond that. That is when we started monitoring those relevant cases. That is when we started monitoring those relevant cases and for example the case of Scara Qezo took two years and there were really a lot of inefficiencies and the process of getting the suspect convicted and it was clear to us that safety again is not just an issue of just toilets. It is an issue of everyone and that is when people from formal areas were able to take up the campaign that is related to sanitation and a campaign that speaks to a lot of issues than just access and human dignity but it speaks to people's rights and freedom and safety and that direct link is not something that is always been made public and it is unfair for people to have to experience such crime whereas they are doing something as basic as accessing a toilet which comes naturally to all of us.

MS MAYOSI: So in other words you say the primary campaign for the SJC was around sanitation but then you soon realised that issues of safety and security arose from sanitation.

MS MLUNGWANA: Correct.

MS MAYOSI: The reality though is that in Khayelitsha in the informal settlements, in Khayelitsha and elsewhere in other informal settlements people have to use communal toilets and communal taps for water. What should happen to make people safe as they use these communal facilities?

MS MLUNGWANA: In terms of safety but I know there is a lot of things that should happen before even the toilets are provided which I might not go into detail, for example there should be communication in how the toilets themselves are positioned in terms of access to a lot of different people within the community, but looking at the situation now there should be a lot of in terms of like lighting, you know, street lights, something as simple as street lights, it does in a way limit the chance of criminals taking advantage of the situation of darkness and we know a lot of things do happen in the darkness. Thing like breakaways between the home, like spaces between the homes so people can see when criminals are approaching, visibility of the police. The police know the informal settlements. They know that there is no breakaways between informal settlements. They should be doing a lot of planning as to how do they access those informal settlements you know, patrolling either by foot or by van where they can access but also that engagement between the police and the communities is quite necessary to ensure that they know what people's challenges are to access the services or the facilities that exist which we are not saying they are fine, but working with what already exist in order to ensure that people are less vulnerable to crime and I think that is what needs to happen.

MS MAYOSI: Do you accept though that the provision of toilets is not the responsibility of SAPS?

MS MLUNGWANA: I don't think we have ever said as the SJC that SAPS should have a responsibility of providing toilets. We have always targeted the relevant government departments that are relevant for providing safety and we have never asked the police to provide any toilets, but what we are saying is that because of the state of sanitation facilities in informal settlements SAPS should acknowledge that there is - people are vulnerable to crime and they get those reports and they should do something about it, because their role is to ensure that everybody is safe and that they do try and combat crime from being carried

on, so limit the chances of crime occurring but also punish those who commit crime once crime is committed.

MS MAYOSI: And what do you say to this question, will crime decrease if everybody is provided with a toilet in their house?

MS MLUNGWANA: I do feel people will be less vulnerable so people will be less vulnerable to crime committed against them if sanitation is sorted and if the relationship between sanitation and safety is addressed so you might not - because there are other sorts of crime that exists. It is not just when one access a toilet but I do think people who need to use these facilities might be less vulnerable or will be less vulnerable actually.

MS MAYOSI: To that particular crime but then the rest remains, the rest of the problems remain?

MS MLUNGWANA: Yes.

MS MAYOSI: You talk in your statement about your experiences when you were a child growing up in primary school and high school where you would often be robbed of lunch money. Can you tell the Commission about these incidents and whether or not they were reported to the police?

MS MLUNGWANA: One thing, robbery in Khayelitsha is something more; you get robbed. You go into the shop; you get robbed. You go into school you get robbed; you go into work. I have been robbed a couple of times going to school. I have been robbed a couple of times going to the Sanlam Centre and specifically the experiences I talk about in my affidavit during my high school years I was travelling to school, because I was in Belhar and I used to catch from Grade 8 I used to catch my bus between in Sanlam Centre, which is now Nqubela Link. That is between the Sub-council offices and what is now the Pick & Pay. It used to be Score. That area there is vendors so people where they have informal business, so we used to stand there like as our bus stop where our bus - we used to catch our bus. Every morning we knew that there will be people who are walking around robbing people, looking for money they can find, looking for earrings, looking for cell phones, even carrying more bags. People who were carrying, who were carrying more bags than you, they were vulnerable to gangsters taking them; women going to work, because that is on route to the train station and to the bus stop in Site B. There are screams every morning and that is not even far from the police station and it is quite a dark area and I used to travel in that particular area for five years of my life to school.

MS MAYOSI: What was police visibility like in particular at peak times?

MS MLUNGWANA: I have never - I don't want to lie. Maybe they were patrolling when I was not there, but I used to leave early hours of the morning and a lot of people, if you ask anyone in Khayelitsha now, they know how dangerous it is to go to work in the morning and there is no police visibility and it is dark.

MS MAYOSI: So did you report any of these incidents to the police?

MS MLUNGWANA: No I don't know what the police will do; are they going to get my money back; are they going to get my stuff back. The only thing I have reported was cell phones that have been stolen only because I needed to block the phone, but I am not expecting to get my phone back because nobody ever gets their phone back and there is no point of reporting of there is nothing that is going to materialise out of that.

MS MAYOSI: But ideally something should materialise out of reporting. Do you not agree?

MS MLUNGWANA: Yes.

MS MAYOSI: You also talk about your father having been robbed a couple of times, once at knifepoint. Do you recall when this occurred and whether that was reported to the police?

MS MLUNGWANA: I am not sure of the years but I was in high school. He got robbed. He was coming from (indistinct) where one of his friends had passed away between in A-Section between - the passages in the different schools, I think it is Ntwasahlobo and another school and two men approached them at gunpoint where they took their belongings but there was no-one in the vicinity so they gave them their belongings and they walked out of the passage and when they got out of the passage that is when they were able to talk with other people who are from that area. A couple of men went with them to look for the men like in the different taverns that are in that vicinity because there is an informal settlement there. They did not find them. They did not report it because there is again I don't know - I don't know what he is thinking but they did not report it, but again if they had found them they probably, because it was a group of men. They probably would have tried to get their belongings back or beat them up. I don't know.

MS MAYOSI: You talked; you mentioned briefly an incident of what you call "vigilantism" when you were a child. Do you know - I know the incident sounds like from your account it happened while back. Can you recall if the police were ever called to that incident?

MS MLUNGWANA: Unfortunately I do not know what happened prior to the incident or not. The only thing we saw, we saw a man being beaten and as kids we followed and he was beaten, stripped naked and yes, blood all over, but the police did get there eventually and the van took him away from the community so I don't know if the police were called or maybe they were walking, patrolling. I don't know.

MS MAYOSI: And you don't know - do you know what resulted from that incident, whether there was any prosecution?

MS MLUNGWANA: I don't know.

MS MAYOSI: Alright. You mentioned the death of a man called Mabhuti whom you say was found dead behind your house. Were you ever questioned by the police in the course of their investigations?

MS MLUNGWANA: No. Nobody spoke to me. Nobody spoke to any member of my family. Even my neighbour who found the body and reported the body to the police was never questioned and I do not know if anything came out of that but everybody witnessed Mabhuti's body being found there and there were a couple of stories, people were saying as to what is the cause of death but I don't know what happened.

MS MAYOSI: How do you know that your neighbour was never questioned?

MS MLUNGWANA: I asked him because when I was writing my affidavit I was trying to follow up if there has been any changes like if anything, because they are the one who found the body and they reported the body. We got there. Like we saw the body after it has been found and he said he has never been asked anything. He was actually also - they were also very surprised.

MS MAYOSI: Again are you aware of anyone, any prosecution or anyone having ... (intervention)

MS MLUNGWANA: No I am not aware of anything.

MS MAYOSI: Moving on to the death of your friend, Thabo Skiva, this - the

incident you say occurred in early 2012 and you say you feared for your safety. You know, you went to the police and you gave a statement and you feared for your safety and you communicated your fears and your concerns to the investigating officer. What was his response to your concerns about your safety and wanting to be anonymous?

MS MLUNGWANA: When Thabo was killed I was with a number of friends and immediately that night because he passed away the same night; from the hospital, Site B hospital we went to the police station to give statements and the same night and we don't know what happened after that and then sometime last year, the beginning of this year we were called by the investigating officer ... (intervention)

MS MAYOSI: 2013?

MS MLUNGWANA: 2013 to an ID parade in Harare Police Station and we did not know what happened after that and then between June and July there was a court date set and the court date - we got the subpoena on a Saturday and we were supposed to appear in court during that week so I personally consulted with my friends. I personally called the investigating officer or Investigator Cloete in Khayelitsha Police Station and told him that we are all still willing to testify but we are scared because the bouncers or the people who murdered Thabo are still working in Khayelitsha and are still around Khayelitsha so the fear is that what happens if they target us or intimidate us in any way specifically because I work in Khayelitsha and I stay in Khayelitsha. He said he will deal with that but then the date was postponed because I was worried about the coming date. Time went by. There was no communication.

MS MAYOSI: Before you move on did he tell you anything about witness protection?

MS MLUNGWANA: No.

MS MAYOSI: What would have been your response if he had told you about that programme?

MS MLUNGWANA: I probably would have considered it because I didn't want - we didn't want those guys to know our identity because we see them almost every weekend. They still work in Khayelitsha.

MS MAYOSI: Okay. Do you want to carry on and describe what has happened to the case since?

MS MLUNGWANA: And then in that day the case - he said let me not worry about it because the case has been postponed. Apparently there was a strike. I don't know if the strike was in court or where but he said it was postponed and again the two police or detectives came to our office at work to give me a subpoena for the 6th of August. Again I reiterated that we had asked, we have said like we want our identities protected because we do fear for our lives and the detective said: "Let me write an affidavit." They gave me an affidavit and I wrote down like a statement as to why we were worried and that we are still willing to give testimony but on that day on the 6th I was also not going to be available. I was going to be in Joburg for the Constitutional Court case on the Commission of inquiry, the judgement, so they said I must write the affidavit and they left and there was no-one who communicated anything and then again last year in November I got another subpoena, again the subpoena came on a Saturday and the court date was on a Tuesday that I should be in court. Again I called the court because there are contact details of the prosecutor. I called the court to talk, to express again our fears and we could not get hold of the

prosecuting officer because he was in court and the following morning I went to court. Two of my colleagues accompanied me, Dustin Kramer and Welcome Makeke and my friend who was also going to testify was in court. We expressed to the prosecutor our fears and he said no, we are going to be protected in court because there is a lot of police and we told him that it is not just in court but we are worried about what happens afterwards and he said: "The court is not going to understand because they haven't tried to do anything to you until now", so he can't justify that. He didn't talk about any witness protection but he kept on saying we are going to be fine, we are going to be fine, and then my colleagues went to find the - fortunately the investigating officer got there. I told him about the fears and then he took us to the witness preparation room and he kept on liaising with I think the prosecutor. He came back, he said they are going to look into it, but the court case is going to be postponed because the footage the court was relying on did not want to work - like a technical glitch, so the footage that somebody took a video during the incident did not want to work in court and they were also wanting to play that evidence and then he said we can leave and then they will communicate the next court date to us and I haven't heard anything from there and to my knowledge there hasn't been a conviction on Thabo's case.

MS MAYOSI: And how do you feel, are you still anxious about remaining anonymous, are you still anxious about the accused, the persons accused of Thabo's murder?

MS MLUNGWANA: Thabo was my friend. He was in an aspiring chartered accountant. He was doing very well. He has a child. He has a family that he is supporting; two, a brother and a sister that they were looking up to and it is not nice especially when I was a witness to his murder to not get any conviction in that process but I still do feel bitter on the fact that I see the guys every weekend because they are still working in Khayelitsha. I see them walking around and I don't know what else they may be able to do to somebody else and I still feel that I am worried about my identity even though I don't know the prosecutor or it is the role of the detective to try and do something about it, but I still want my identity to be protected, even though I am worried now. I don't know if they know who I am and who they are.

MS MAYOSI: Your brother's stabbing in June 2013, why was it not reported to the police?

MS MLUNGWANA: We did not report it because one, my brother was in hospital and we were focusing on his recovery and the same day the family of the boy that had stabbed him spoke to my family so there was a family recon - like two families sitting together and talking about the problem and saying it is not going to happen again, but I guess we did not think. Even my colleagues asked me why we did not report it. I think we did not like we did not think it is necessary for us to report it and then the second time it happened again, the same boy and still nothing happened.

MS MAYOSI: Did you report the second time?

MS MLUNGWANA: No.

MS MAYOSI: You mentioned in regard to your brother and his involvement in gangs. What you say in your affidavit about gang fights and gangs in schools is that the police often do little or nothing to prevent combat or effectively investigate and prosecute this nascent form of organised crime. What do you mean by that?

MS MLUNGWANA: I mean every day we know kids are going to fight. We know which hot spots they are going to fight. I have seen a lot of kids being stabbed, murdered even in front of our offices in Khayelitsha. I feel the fact that police know where the hot spots are of the gang violence they should be visible enough in those areas and patrol. They know which schools are rife and which teachers are - like kids, where they jump fence and come into the school and where teachers become the target and then learners inside the school premises and I also feel when they are called as well maybe their response is not as quick enough but I am not saying maybe they normally respond, but their response is not as quick as it should be. But also a lot of the kids - ask any kid who is fighting in the school gang violence, they will tell you that the police are going to take you when there is a fight. They are going to take you to your turf and they are not going to arrest you so there is a lot of kids who have stabbed each other. They carry pangas, knives and they beat each other with stones and they have never been convicted. Actually I am not aware of any convictions but they are let go and there is no proper explanation whatsoever.

MS MAYOSI: Have you witnessed any incidents where the police have disarmed the gangs?

MS MLUNGWANA: I do feel they are also finding it difficult to actually disarm the gangs because a lot of the times they fight and there are spectators, the people, so it is two different groups and the rebel people are the school children coming out of school and especially on Mongezi Road where our offices is, the kids will fight but if a police van is coming they will quickly like put, throw away or hide the weapons and then move back to where the spectators are so police would come obviously speeding in their car and then the group will disperse but immediately when the police leave again the fight is going to start again so I have never seen how they disarm the kids but I have seen them trying to break away and the kids do break away when the police comes.

MS MAYOSI: In your view what should the police do to respond to this problem of school gangs?

MS MLUNGWANA: Like I said patrolling the area is very important and ensuring that for example in Green Point there is a hotspot on the corner of Lansdowne Road and Pama Road. Kids fight there every day - actually my branch in Green Point has tried to mediate between the two groups. They have called the police because once you put the two groups together there is a fight. They have called police a couple of times to be there to mediate between the parents, the teachers and their different groups, but the police promise to come and they don't pitch up. Their claims that in that exact corner there is a surveillance camera but a boy was killed. A couple of boys were stabbed in that very same corner but the footage was never used as evidence and they claim that the camera is not working so I do feel not just maybe the police but they should work with communities that are trying to take initiatives and there are schools and there are different organisations that are trying to do something but maybe the level of communication is not as well as it should be.

MS MAYOSI: In your affidavit you discuss a number of problems and issues that have arisen with SAPS and other agencies and you say that as SJC you are committed to working with SAPS to try and improve the situation. What do you mean? How do you see that working together relationship playing out firstly and secondly what does the SJC bring to the table in that cooperative relationship?

MS MLUNGWANA: I think all communities should acknowledge that SAPS

cannot do this alone and we need to understand that we as residents also have responsibility to assist SAPS and SJC we bring something because we are from that specific community. We have local knowledge of the crimes that exist and I think maybe that relationship is essential but also networks. Just before the break we heard how important the networks that SAPS themselves can create with different legal structures within the communities and networks with organisations and community based leadership structures as well and I think that is essential but I don't think we should put that burden on SAPS alone. It means all of us as different organisations should also take a responsibility of taking that step but also educating our communities on the role of SAPS and how for example that people need to report to crimes that occur in order for SAPS to be able to take them on because if people don't report then the police won't know and won't be able to investigate those crimes.

MS MAYOSI: Why do people not report?

MS MLUNGWANA: Because a lot of times nothing happens like the people's cases just get thrown out of court without any communication or the suspects get released with no communication with the victim's family and sometimes there is just no communication at all and I think that communication is essential whether it is - I am not saying it is a role of the police but whether the fact - there are legitimate reasons why the cases are thrown out of court but I do think that that communication is essential because a lot of the times when people go to police stations and they don't receive the necessary treatment from people who are assisting them, then they lose hope. Like if you go through the very same thing and you don't get the outcomes that you want over and over again then you feel helpless and you feel there is nothing you can do and there is no gain through it.

MS MAYOSI: You talk about the effects of alcohol or the contribution that alcohol makes to crime in Khayelitsha and in that regard you say that there are hundreds of shebeens in Khayelitsha and many of them are unlicensed shebeens. How should the police respond to this problem?

MS MLUNGWANA: I think the police obviously know which illegal shebeens exist and which shebeens have license. I think they should close down all the shebeens that are illegal and that is their role. They should close them down; ensure that that goes down; ensured that they patrol and they are visible enough because obviously we know that there is going to be a lot of fights and violence around these shebeens, but I say the first thing that they should close them down but at the end of the day we should recognise that some of these taverns are a source of income for some community, for some families. They are relying on that income but then it is our role as community based organisations and different structures within the community to educate people who have illegal shebeens on what should they do to make sure that their shebeens are legally now, because that has a benefit for the community but also it has a benefit for themselves for creating a business that is legalised so I think that is another place where different structures within the community can assist the police.

MS MAYOSI: There is a section in your affidavit where you discuss the nature of crime and what do you think are the causes of crime in an area like Khayelitsha and before you answer that, it is not SJC's contention that SAPS actually causes crimes, so in your view what are the contributors to crime in an area like Khayelitsha?

MS MLUNGWANA: For starters we know a lot of people in Khayelitsha; the socio-economic demographics are quite different. A lot of people are working class and some are poor communities. A lot of people are unemployed. We have a lot of young people who are out of school and are not working and are not studying. There is a lot of infrastructure challenges in terms of lights, in terms of roads, sanitation facilities and all the other issues and I think all of those they are hybrid that kind of builds on how people are not safe, but also not forgetting visibility and other social or crime prevention strategies that might need to be employed in an area like Khayelitsha.

MS MAYOSI: Tell the Commission about the problem of homophobia and hate crimes in Khayelitsha and how from a SAPS perspective it should be dealt with?

MS MLUNGWANA: I think we know that a lot of gays and lesbians and transgender people have a lot of challenges and people realising that they have their own rights but also we know our community is very stigmatised and it is taking a lot of education and engagement for people to make our community understand the rights of LGBTI but also it becomes difficult when they face the very same or the very same crime committed to them when they go and report cases how the police not only focus on what they come to report, whether they had been victimised verbally, sexually and physically but a lot of the times we often focus on their sexual orientation and ask them stupid questions like why are you pretending to be a man when you are a woman, how do you do sex and things like that, and I think they feel the community is failing them but it is worse when they feel the very same people who is SAPS and the courts that are supposed to protect them are not protecting them enough and that goes with the courts and how their cases are really treated and I think the case of Zoliswa Nkonyana is one example that we can use, one example that we can all learn from.

MS MAYOSI: If at the end of this Commission this Commission finds that the complaints are valid can you tell the Commission what some of the recommendations you would wish to see this Commission make for SAPS to improve the relationship and the service in Khayelitsha?

MS MLUNGWANA: The one big thing is that the recommendations I hope they will acknowledge that SAPS is not the only state organ that has responsibility to promote safety and that there should be a safety crime prevention plan that is going to acknowledge all the different stakeholders, all the different functions of each department and everyone who should, to ensure that Khayelitsha is safe, but also acknowledge that Khayelitsha has the demographics that it has, it has the challenges that it has. We have informal settlement. For example yesterday somebody mentioned that Khayelitsha - we can't expect Khayelitsha to be like Rondebosch. For me it is sad because I do want Khayelitsha to be as safe as Rondebosch, as safe as it is, but I am not saying I want Khayelitsha to be like Rondebosch. I want the police service in Khayelitsha to understand what they are dealing with, to understand the nature of different communities they are dealing with, to understand both informal settlements and formal areas and the challenges that exist in those communities and I think that plan should acknowledge all those things. Especially we can't ignore infrastructure. We have a lot of challenge with infrastructure like roads, housing, you know, street lights, sanitation facilities, you know, playgrounds for children, after school care programme, resource centres where people can do a lot of activities and after school programmes that children at school can link it with their educational

development and we need to acknowledge that or maybe the recommendations need to acknowledge some of those and we also need to understand that Khayelitsha is a lot of single parents and a lot of young parents and maybe having programmes that actually try and empower parents to actually better deal with the challenges that we face in Khayelitsha but I think another big thing is that there is a lot of - I don't want to say resources or funding. There is a lot of resources for organisations that are dealing with gender-based violence and rape that are focusing on the marginalised groups for example the LGBTI rights, you know, asylum seekers and people with disabilities, elderly people and children and I think the recommendations need to acknowledge that they do feel the brunt even though Khayelitsha is not safe but they are the worst effected, but also acknowledge that within SAPS there should be - leadership of SAPS and management should acknowledge that there is a lack of trust between communities and the police service but how do we try and build that? How do we build up police officials that are professional enough and that if there is a person who conducts themselves outside the duty of their work, how do we like that proper disciplinary actions are taken against them but also recognise that SAPS also has challenges in-house in terms of resources, in terms of capacity, but how do the recommendation acknowledge them being capacitated enough to actually deal with the population of Khayelitsha and the challenges that Khayelitsha has and I think training and ensuring that we deploy people that are willing and are ready to conduct the work that is expected of a police official and also acknowledging the kinds of crimes and the trauma that the police often face in a community like Khayelitsha where they see murders and brutal murders and they deal with people's cases on an everyday basis that are not bearable to any individual. How do we get those police officers enough support for them to cope with their mind off work? But yes, and another big thing is just let's build the power of communities and let's build the power of community policing fora so that we can get communities to understand the challenges that SAPS has without any defence but SAPS to understand the challenges of communities without any defence and I think that relationship is quite crucial and I think if we empower our Community Policing Forum enough to know what their role is but also for communities to understand what the role of the Community Policing Forum is.

MS MAYOSI: I don't have any further questions Madam Chair.

NO FURTHER QUESTIONS BY MS MAYOSI

COMMISSIONER: Thank you Ms Mayosi. Ms Bawa, Mr Sidaki. Have you got questions for this witness?

MR SIDAKI: Yes Madam Chair.

COMMISSIONER: I think this will be a good moment and then Mr Arendse you will give us some cross-examination questions in due course to be put to this witness. The general principle is that evidence leaders may ask questions for clarification etcetera but cross-examination will be dealt with in due course.

MR ARENDSE: I was pleased to notice that Ms Mayosi sensibly posed a number of those questions to the witness when she was examining. It is a very good strategy, so we won't repeat them.

COMMISSIONER: Okay good and I understand while we are just talking about this Ms Mayosi that the questions have been given to you at this stage from SAPS, and we would think that maybe Wednesday might be a convenient time. I don't know if that is convenient for Ms Mlungwana but if it is it might be a

convenient time.

MS MAYOSI: Yes, questions have been provided Madam Chair and Wednesday seems like a good time.

COMMISSIONER: Good, and I don't know, my colleague may have some questions as well but Mr Sidaki would you like to go ahead now?

MR SIDAKI: Thank you Madam Chair.

CROSS-EXAMINATION BY MR SIDAKI:

Ma'am, just a few questions by way of clarification; you made mention towards the end of your testimony of the Community Policing Forums and the importance for that structure to be effective. What is SJC doing about community participation in Community Policing Forums?

MS MLUNGWANA: We have a lot of leaders, community leaders in the SJC that some have worked inside the Community Policing Forum but as an organisation we have tried to get invited to the meetings, but you find that maybe the meeting is not - they say the meeting is sitting this week but it is postponed and we don't get to see the work of the CPF and also other communities structures that we continue to talk to so that they can use the Community Policing Forum are not aware of what the role of the CPF and the leadership structures are not aware of how they can use the CPF to kind of communicate with the police station and I feel some people feel they are part of the police maybe because of lack of clarity, but I do think there is a given or provided the necessary support they could serve as a very good leg between communities and the police.

MR SIDAKI: Well we know that there is a Harare Community Policing Forum, Khayelitsha Site B Policing Forum, a Lingelethu-West Policing Forum, and also a Khayelitsha Cluster Committee Policing Forum. Are you aware of these policing forums in Khayelitsha?

MS MLUNGWANA: Yes I am aware but I have never worked with all the rest. With the one I know is where I stay which is Khayelitsha Site B Police Station. The same with the cluster sections we have communicated with. In communicating with the police stations I remember they were able to give us the different contacts of the vans, the cluster vans that you can use to report, which is much - the police suggested it is much more useful than 10111 and we have used them. They have responded in some cases but they have not responded properly or well in some cases; just the police vans that - I meant the cluster van sector.

MR SIDAKI: So the police told you that the sector numbers ... (intervention)

MS MLUNGWANA: Of the responsible van, so if you need a police response ... (intervention)

MR SIDAKI: Yes, they are more useful than the 10111 number, is that what you said?

MS MLUNGWANA: They said it is much more responsive, like because we kept on complaining about it and they were trying, because we are always trying not to blame and try to work with them and they said: "Look if this is not working, this is the number you should use", and we have tried using that number. In some cases they have responded but in a lot of - in my personal experiences because I have also called the numbers when I see kids fighting, either the phone rings and there is no answer but I have never personally spoken to the sector person in Khayelitsha Police Station which I believe is Zamani.

MR SIDAKI: Now do you participate in the Khayelitsha Site B Community Policing Forum?

MS MLUNGWANA: Not personally, not as Phumeza, but the SJC does work with - not as a secretariat or as a member of the policing CPF but we have tried to have communication as to what - the type of work they are doing but we have never really had like good relationships with them as to we sit in all of their meetings, we know what their programme is, we know what they are supposed to be doing, which meetings are they supposed to have - that has never happened. That was our intention but it has never happened.

MR SIDAKI: Why has it not happened?

MR ARENDSE: That is why I think the CPF is not - the way they are structured they are not - I don't want to say they are not powerful enough but they are not commanding their role. They are not... I don't want to say they are not doing what they are supposed to be doing, but we don't know what they are doing. We don't know how they are doing their role and our intention in trying to work with them was to try and seek how they are working and how can they be supported and we have never been able. Like I said a couple of meetings where we were able to contact them and saying: "We want to join you at your meeting", the meeting never takes place.

MR SIDAKI: Now you made mention of gang fights that you had seen taking place where you said gangs engage in fighting and when the police come they disperse and wait on the fringes and when the police leave again the gangs then reconvene and continue fighting. Did you report this to the police that this is what happened?

MS MLUNGWANA: We always report. We always report when we see fights. We always call the police.

MR SIDAKI: Yes, but did you tell the police that: "Hey, actually when the police leave the gangs reconvene fighting."

MS MLUNGWANA: No we did not do that because we were never questioned about any gang fights, but because as the SJC we always try to for example where I stay it is a different gang and where the Green Point branch is, it is a different gang and as members of the SJC we always try to engage with the different groups to see what needs to be done and they raise all these things in these different meetings and those different engagements because some of them are our brothers and some are friends and members of the SJC so we were never in a position where we were questioned by the police when the gangs are, what time do they really fight, who, you know, like what should they look out for and in a lot of those different forums where we called both groups, parents, teachers - we have had a couple of those in the Green Point White Hall, teachers, different structures within the community and churches to say we want all these people to talk about the gang fights in one room and the police actually mentioned the problems and to hear what the challenges are. They have never pitched and that has been our challenge, but none of us has ever been even in our office, even though there have been kids stabbed in front of our office there has never been any questioning or interrogating of what we saw.

MR SIDAKI: When you say "the police never pitched", were they invited to those meetings?

MS MLUNGWANA: They were invited prior to the meetings so we have invited to meetings on a Saturday, two different meetings I am sure of which I was present. The first meeting actually a fight broke out between the two groups and the second meeting the police promised that they are coming and we kept on calling them even during the morning and they kept on saying: "We are on

our way, we are on our way...” and we ended up having to have the meeting but only with the one side of the groups and only with the parents of the other group and not have all kids in one room because we know a fight is going to break out if they are all in one room, but they never pitched.

MR SIDAKI: Which police station was that that you called for the particular meeting?

MS MLUNGWANA: It is Site B Police Station.

MR SIDAKI: Now someone who has lived in Khayelitsha for a long while would you agree with me that Khayelitsha has a different setups on the one hand it has got formal structures like any suburban area even comparable to Rondebosch for that matter and other areas that are informal. Would you agree with that?

MS MLUNGWANA: Yes, I agree with that.

MR SIDAKI: And therefore that and also if we look at the map that was presented to the Commission yesterday, the middle map on the wall, the evidence was that the informal areas of Khayelitsha are the ones that are shaded in yellow and therefore most of Khayelitsha is actually a formal area. Would you agree with me?

MS MLUNGWANA: Yes, I agree, but it is not all formal-formal like brick houses. Others are semi-formal where you still have breakaways, toilets and electricity, but it is a different form of formal. Like it is like still zinc houses but in an individual plot.

MR SIDAKI: Yes but they would have roads for instance?

MS MLUNGWANA: Yes.

MR SIDAKI: And therefore an assertion that Khayelitsha cannot be policed property or well enough because it is an informal area cannot be correct. Would you agree with me?

MS MLUNGWANA: I agree with you. It is not correct.

MR SIDAKI: Most of Khayelitsha should be policeable ... (intervention)

MS MLUNGWANA: Correct because ... (intervention)

MR SIDAKI: Because it is a formal; it is formally set out, correct?

MS MLUNGWANA: I agree with that, correct, but I also feel even the informal areas are policeable. There are different - we can do it in different forms.

MR SIDAKI: Now there was evidence this morning by Ms Bontshi who testified about a history, a problematic history involving her nephew Andile where it seems neighbours and community members had been complaining about this particular house where he lived where they felt there were smoking of drugs there and those that were there smoking drugs would go out and cause trouble in the area. Now do you know if by-laws to deal with that sort of problem in the community do you know if by-laws are enforced in Khayelitsha and to what extent they are enforced?

MS MLUNGWANA: By-laws in what sense?

MR SIDAKI: Well laws that regulate the relationships between neighbours that are enforced by either the police or the Metro Police. Do you know if there is anything that happens to that degree?

MS MLUNGWANA: No. No. I don't know.

MR SIDAKI: So in your area where you live if you had a similar problem with a house where it is populated by people who smoked drugs and cause trouble in the area what would you do about the problem, where would you report it?

MS MLUNGWANA: Because a member of the SJC and I hold the values of the SJC I would report it but ... (intervention)

MR SIDAKI: You would report it to whom?

MS MLUNGWANA: To the police, but knowing my community but then it is my role again to educate my community. They would report it or they will go confront the person who is selling drugs or whoever or they have a dispute with and the street committees would definitely do something about it. Either they sit and take a resolution on how they take that up, but if there would be a report and the person still continues to conduct their business they will probably take them - I don't want to say they will take the law into their own hands. They would decide what they do. Either they demolish the house or they chase the person away but a lot of the times where there is something which the street committee and the community doesn't agree with the street committees - people would complain and the street committees would sit and discuss what needs to be done in going forward.

MR SIDAKI: So are street committees something that is entrenched in Khayelitsha? Do they exist in the area of Khayelitsha?

MS MLUNGWANA: I would say they exist but obviously it is different from one community to another on how strong or how they work but there is also other leadership structures like Sanco which in other communities they would be more; stronger than street committees but there is often a close relationship between Sanco and street committees. Sometimes it is the same people but sometimes it is different people, but there is a close relationship.

MR SIDAKI: Have you had any firsthand dealing with the street committees?

MS MLUNGWANA: Because I am regarded as a child my mother was actually a secretary in the street committees and until now I don't sit in the community meetings but I do have conversations with some of the elders because they do try and talk to us but I don't sit in the community meetings.

MR SIDAKI: Yes. Thank you Madam Chair. I have nothing further.

NO FURTHER QUESTIONS BY MR SIDAKI

MS MAYOSI: Nothing Madam Chair.

NO RE-EXAMINATION BY MS MAYOSI

COMMISSIONER: Thank you very much for your testimony. We will liaise with your counsel about an opportunity for the questions that SAPS have identified for you to answer probably on Wednesday, but otherwise we will then - we will adjourn today until Monday morning at ten o'clock and thank you once again.

COMMISSION ADJOURNS: (at 15:30)

31 January 2014

COMMISSIONER: Good morning everybody, Ms Mayosi is your witness here Ms Mlungwana?

MS MAYOSI: She is Madam Chair.

MR ARENDSE: We were just about to apply for default judgment against...[laughter] it seems our best way out of this.

COMMISSIONER: We wouldn't mind a default either we wouldn't have to write a report. Ms Mayosi, Ms Mlungwana is going to testify in isiXhosa again?

MS MAYOSI: No she gave her testimony in English Madam Chair she will continue in the same.

COMMISSIONER: Yes good I couldn't remember, thank you.

PHUMEZA MLUNGWANA (still under oath)

CROSS-EXAMINATION BY MR ARENDSE

MR ARENDSE: Thank you hon Commissioners. Good morning Ms Mlungwana.

MS MLUNGWANA: Morning.

MR ARENDSE: I won't hold it against you that you are slightly late. Do I understand the SJC's, the nature of their complaint of 28 November 2011 and in fact the entire campaign of the SJC is focused on social justice, i.e. the violation or the alleged violation of various constitutional rights, socio-economic rights contained in the Constitution, do I understand that correctly?

MS MLUNGWANA: Are you asking me to confirm that?

MR ARENDSE: Yes whether my understanding of it is correct.

MS MLUNGWANA: No I don't think, I think it's interlinked it's not socio-economic rights or criminal justice it's interlinked and the criminal justice, it's interlinked. The criminal justice campaign is one of our primary campaigns so it's not one or the other.

MR ARENDSE: Yes it's not a trick question you make it clear that the campaign is about various rights, for example the rights to proper sanitation, the right to water, the right to electricity, housing and so on, underpinned by you say the rule of law and the enforcement of the law is that right?

MS MLUNGWANA: I meant we have the sanitation campaign which is focusing on a whole lot of aspects that are related to the sanitation campaign, we have the criminal justice campaign which is focused on a whole lot of aspects that are related to the criminal justice campaign. But obviously you can't understand one without the other so socio-economic rights link between the two but then those are two of our primary campaigns but the rule of law is, the Constitution basically is the umbrella of both our campaigns.

MR ARENDSE: In fact your complaint of November was aimed at the whole of the criminal justice system is that correct?

MS MLUNGWANA: Yes.

MR ARENDSE: Of which obviously the South African Police Service plays a very crucial and critical part.

MS MLUNGWANA: Correct.

MR ARENDSE: That is why subsequent to the publication of or the proclamation of this Commission of Enquiry and its terms of reference the SJC expressed some disappointment that the terms of reference were focused perhaps too narrowly on the police is that correct?

MS MLUNGWANA: No, our recommendation to the Premier we did cite section 206 which deals with police oversight and when we expressed our disappointment it was not that it was only focused on the police that's what we wanted and we got that but we would have wanted the City of Cape Town like Metro Anti-Land Invasion Unit to also be part of those terms of reference. We still got what we wanted but we would have wanted the terms of reference to include the City of Cape Town stakeholders not the criminal justice system as a whole.

MR ARENDSE: Just as far as the, because your complaint was also directed at the conduct – you described it as violent – of the City's Anti-Land Invasion Unit do I recall correctly?

MS MLUNGWANA: Yes that's correct.

MR ARENDSE: Obviously any kind of conduct by any law enforcement agency or any other agency for that matter the way you are treated by SASSA for example when you go and collect your grant all falls under the jurisdiction of the South

African Police Service would that be correct?

MS MLUNGWANA: I don't, can you repeat that?

MR ARENDSE: If anybody conducts themselves unlawfully and commits what can be regarded as criminal conduct it falls under the South African Police Service.

MS MLUNGWANA: I believe so.

MR ARENDSE: So where for example the Anti Land-Invasion Unit conduct themselves in a violent and unlawful manner that also falls under the South African Police Service would you agree with that?

MS MLUNGWANA: Are you saying for example the Metro Police falls under SAPS?

MR ARENDSE: No, no I'm saying anybody's conduct, we know as a starting point no one is above the law if you break the law then you must be held to account.

MS MLUNGWANA: Account.

MR ARENDSE: And if the conduct is criminal in nature then the South African Police Service must deal with it.

MS MLUNGWANA: Ja, yes.

MR ARENDSE: So all I was asking you is whether if there are complaints about violently unlawful conduct on the part of the Anti-Invasion Land Unit then that should properly be dealt with or investigated by the police.

MS MLUNGWANA: Yes.

MR ARENDSE: Now you mentioned in your evidence and I understood it to mean that the existence of street committees here in Khayelitsha is a given, was my understanding correct?

MS MLUNGWANA: Ja but street committees in some areas are more I don't want to say powerful, in other communities you have street committees more active and in others you have SANCO more active but there is a relationship between the two so they are referred to in those two.

MR ARENDSE: I stand corrected and I don't intend anything by it I may have heard that your mother is also a member of one of the...(intervention)

MS MLUNGWANA: A street committee yes.

MR ARENDSE: Thank you. Can you perhaps elaborate or expand a bit on how the street committees operate or conduct themselves or how are they supposed to. Let me just share my one experience I had a pretty clear understanding of how they operated in the pre-apartheid days but I'm not sure whether they still operate in the same way today. So you're a bit younger than me so what is your understanding or experience of how they operate now?

MS MLUNGWANA: Unfortunately like I said I won't have experience because I don't sit on the Street Committee. Like I said I stay in a semi-formal area there's a street like Long Street with houses and in that vicinity there will be a committee that is responsible. For example if there's a person who is coming in who is going to rent a back-yarder in their yard the street committee needs to give approval of that so that they know at least that there's another family in the vicinity. If there's a person or there's a problem somebody whose house – not whose house is burgled or communities are concerned about maybe somebody's child who they feel maybe is part of a criminal gang or something then the street committees will talk about that. If there's a death in the community, it's more like a communal meeting if there's a death in the community and the neighbours, everybody needs to do something the street committees would talk about that as

to how they want to do it. So I don't know if they operate differently from one street to another but in our street there's a lot of things, for example if somebody dies, whether it's murder or not, then you support that family because we stay together we know if you're struggling or not. If somebody is, there's been a case that the committee feels they should stand up for or maybe there's a, for example where I stay there's a Pilani Crèche, a nutrition crèche and there was a fruit stall where people sell fruit, veg and stuff and they are vending and there was a problem that in that stall, obviously they would sell fruit throughout the day but then there was a concern that criminals or maybe not criminals, the kids who smoked and obviously they smoke and do whatever there like dagga and other things, they used to sit there at night. So meaning it causes a threat because if you're coming in either direction you don't know if there's anyone inside so the street committees were the people who had to sit together and discuss that and they are the ones who had to speak to the families so that the stall could be removed. So those kind of disputes between neighbours and things that concerned in the community.

MR ARENDSE: So it's really your most basic and fundamental form of civic organisation which deals with almost all matters that affect members of its immediate community.

MS MLUNGWANA: I could say that.

MR ARENDSE: From sort of birth to death that kind of thing.

MS MLUNGWANA: I could say that.

MR ARENDSE: But it also gets involved in disputes, in settling disputes.

MS MLUNGWANA: Yes they do.

MR ARENDSE: Between and amongst community members and I suppose what I'm sort of getting gearing up for is what role does it really play in disciplining community members who commit misconduct like even criminal conduct?

MS MLUNGWANA: Discipline in what sense?

MR ARENDSE: Well I'm relating this to the issue of vigilante killings to get more to the point because thus far we've heard difference views on how these street committees operate. There was the one witness who gave evidence that on a Friday night there was a meeting, they were summonsed to the meeting because their family member was accused. The meeting was hostile and a lot of things were said but at the end of the day there was a decision that the miscreant should pack his bags and be removed from the community but then the outcome unfortunately next day was different and it seems to be unclear how that happened, at least that's my recollection of the evidence. Then there's a more direct indication from a person Madam Chair who hasn't been called yet as a witness but who pointed out to the Commission in an inspection *in loco* that there's an open field, a meeting takes place, the person is found guilty and the person is killed. Are you able to comment on those two what seem to me totally different experiences?

MS MLUNGWANA: I don't think I can comment on that because I don't know what happened there and we've never, we've had disputes being discussed, for example we've had housebreakings being discussed but there's never been any outcomes of a vigilante or physical taken against the perpetrators. But obviously there were resolutions that were taken in those meetings. But if you want to link the community leaders and any form of vigilante for example I think in my affidavit I do make an example or I do talk about the case of Scara Qezo. Scara Qezo is a member of ours he's staying in RR Section and his wife is

actually a member of the street committees or SANCO like the leaders of the community. He was robbed on his way like next to N2 and he was stabbed obviously and then the criminals ran away, there were two criminals they took away his belongings and they ran away. But community members got hold of one guy who was running away and other community members were assisting him because he was obviously bleeding. The community members during that period they were very angry because they can see that somebody is injured and somebody has lost his belongings and they know each other. Then the police came, I don't know who called the police, the police came and then he was arrested. The same day he was arrested when Scara was robbed in the morning, the very same day he was out again. So for me it's not like communities immediately see somebody doing something wrong and discuss we're going to kill you, we're going to beat you it works with emotions and frustrations and I don't think it's organised and I don't think the intention is to kill. So when they saw the very same person in the evening again obviously they are angry so for me that's another way or another thing that increases the chances of community taking the law into their own hands because they actually got more angry when they saw him again and it was not the first time that guy has broken the law. So I think it's those, and in many communities where vigilante attacks have happened it's not about people saying, making a decision that there is no other plan but to kill you, they are angry and they thought there is no other option but to take the law into their own hands because nothing is going to happen. So I don't think people sit in a meeting and say we're going to do this because we feel it's for fun or because criminals plan it I think it's genuinely people with genuine concerns, they're angry and frustrated.

MR ARENDSE: I tend to agree with you on the one hand there appears to be that culture which would accord with my understanding of what the position was before 1994 but then there is really a sobering account of a person who hasn't yet been called where there is actually such a deliberate decision. But I think you've described that particular experience but just to say again it seems it's about this relationship with the community and their understanding because it might be that this particular person was arrested by the police, was released because the charge is assault or common assault or assault GBH, my criminal law and procedure let's me down and perhaps Advocate Pikoli can help, but I don't know do the police at that point decide to give him police bail, what is called police bail? I don't know what day of the week it was, if it was a Friday they should detain the person until court appearance on Monday so those are particular issues.

MS MLUNGWANA: Ja and I don't disagree with you on that but then he was back in the very same community and the person who was injured didn't know why this guy is back. If there was a perfect explanation why he was released then I feel the victim should have known he should have been informed. The community is angry at least they can be able to understand why the person is out again. So I'm not saying he shouldn't have been released but obviously you're going to get angry if the very same person who assaulted you and took your belongings is back here again and he's roaming around the streets he'd probably do the very same thing to another person on the same day.

MR ARENDSE: Because the history of an accused is really only going to be brought to the attention, certainly of the court, when there's a bail application or it's during the course of a trial and the person is found guilty and now you hear

of that person's previous convictions. But I understand I mean you know the police should simply have asked or they should be told this is actually a person that this is not the first time he's doing this. I suppose the one thing that we are good at and I don't mean it in a, as a country and as the Government at Parliament there's one thing we're good at and I don't mean it cynically is we've got a lot of good social legislation on our statute books, do you accept that as a general proposition?

MS MLUNGWANA: I'm not aware of the legislation I'm sure there's one that exists.

MR ARENDSE: Well particularly in your particular area of activity there's good law the problem I think we all agree is the issue of its implementation and whether it's done effectively.

MS MLUNGWANA: Hmm.

MR ARENDSE: Now one of the pieces of legislation that does make provision for something which seems to me aimed at dealing with at least the one aspect that the Commission is concerned with and that is police/community relations and that is the Community Police Forums. Now I don't see anything on the record and if there is then I've either failed to read it or I've missed it but there doesn't seem to have been some concerted effort on the part of the SJC to become involved in Community Police Forums to petition station commanders to become party to the Community Police Forums. If one again looks at I think it's section 18-21 of the SAPS Act then one sees all these really grand sounding, it's aimed at making sure that, because the Act recognises that the police cannot police effectively or at all if it is not in consultation with the community, if it's not in cooperation with the community and if it doesn't involve the community crucially. The community must give evidence, they must come forward as witnesses etc., again grand sounding stuff. Why has it not worked here in the Khayelitsha area?

MS MLUNGWANA: Maybe that's a good, I think that's a good question and I'm not going to deny if you feel that the SJC hasn't done enough to work with CPF but maybe that's a good question and I think also again in my statement I talk about the challenges that CPF has, not coming from me but coming from SAPS themselves or the tasking(?) report and those challenges are real they are recorded by SAPS themselves. But like I said when I was giving evidence I've never been part of CPFs personally, just to tell you the truth I've never been aware of CPFs before I was part of the SJC I didn't know what CPFs are and I'm from Khayelitsha and I didn't know what CPFs are and that's one problem on its own. I was part of the SJC and they have tried to, I do feel they've tried to approach the CPFs or work with the CPFs and maybe we didn't try hard enough but we've had challenges. Those challenges in the beginning actually confirmed everything we knew or our members have known about CPFs already. But you must also remember that the membership of the SJC is people from Khayelitsha who a lot of them are leaders in their respective communities. So they already had their perceptions of what the CPFs are and their past experiences and when we started trying to approach the CPFs we also, that just confirmed everything that we've heard. Maybe we should have tried harder but we don't have, I believe there will be somebody who is going to talk about the CPFs in the Commission, I think that's a very interesting point to actually talk about. So I think maybe the CPFs themselves are not doing enough to get known in the communities.

MR ARENDSE: Because it seems to me and it's not even anecdotal, from the hard evidence that despite the high crime rate in Khayelitsha it is nevertheless a highly organised community at street committee level, the kind of good work that you and other organisations are doing on the ground, certainly much more organised than many communities I know or that I come from.

MS MLUNGWANA: You say Khayelitsha is much more organised?

MR ARENDSE: I'm talking about Khayelitsha and the point that I'm trying to make is that why is there that gap between the police and the community when there are organised structures like street committees, like SANCO, like NGOs like yourselves and others, Free Gender testified here and so on, can you perhaps explain that?

MS MLUNGWANA: I think that's maybe what the Commission, the outcomes of the Commission to actually help, assist us to see why the gap exists and what are the challenges and how that can be overcome. I don't believe it's, we know there are systematic failures but I do think a lot of organisations on the ground are doing everything they can and I'm not saying SAPS is not doing everything they can I'm sure they are doing the best but maybe the best is not enough. Maybe the residents are also doing the best they can but maybe the best is not enough and hopefully a lot of evidence that's going to come before the Commission is actually going to give us a clear understanding as to how we breach that gap, how do we build that trust, how do we understand the missing elements that would make the organisations on the ground and the government organisations or maybe SAPS to have improved relationships with communities.

MR ARENDSE: We also know that in terms of the Constitution the Department of Community Safety are enjoined to play an oversight and monitoring role of police services rendered in this province. Again unless I've missed it or just failed to read it which is quite possible given the many documents that's before the Commission, I haven't seen any interaction between the SJC and DOCS, the Department of Community Safety.

MS MLUNGWANA: What form of communication?

MR ARENDSE: Well in terms of actually interacting with them, engaging with them and meeting with them and lodging complaints about police conduct given that that is their mandate.

MS MLUNGWANA: Civilian Secretariat where does it fit in as a part of the police side or the Department of Community Safety?

MR ARENDSE: The Department of Community Safety is the Western Cape, it's a department in the Western Cape Government.

MS MLUNGWANA: No I'm asking specifically Civilian Secretariat, the Civilian Secretariat of police.

MR ARENDSE: No they do form part of the Civilian Secretariat but there's also the Provincial Secretariat which I think is also Dr Gilbert Lawrence doubles as the Provincial Secretariat.

MS MLUNGWANA: Oh no I was, the reason...(intervention)

MR ARENDSE: But there have been problems with that particular structure.

MS MLUNGWANA: I wanted to give you a straight answer that throughout our work we've done a lot of trying to communicate with different departments that's why I wanted to confirm exactly which one because that one is one of the recent ones which I was part of. We've done several letters and complaints and trying to speak with different departments, we've monitored Portfolio Committees of Parliament, we've submitted memorandums to the Portfolio Committee of Police

in Parliament. So I don't want to confirm your statement to say we haven't worked with DOCS I think we've worked with DOCS but I wanted to give you a straight answer so that I can tell you exactly how...(intervention) different departments.

MR ARENDSE: That's fine I'm sure that Ms Mayosi has captured that question and if there is some kind of answer either relay it to me or we can just put it on the record. When you talk about Parliament are you talking about the National Parliament or the Provincial Parliament?

MS MLUNGWANA: I'm talking about Parliament, the Portfolio Committee.

MR ARENDSE: The big one.

MS MLUNGWANA: Ja the big one.

MR ARENDSE: Okay because you know in the small one, the provincial one the Police Commissioner he also gives an annual report to the Portfolio Committee do you attend those report back meetings?

MS MLUNGWANA: Portfolio Committees yes.

MR ARENDSE: Yes, in fact the Portfolio Committee can even before this disputed Commission it was always the case that the Portfolio Committee could hold him to account at any time and call him to appear, you're aware of that?

MS MLUNGWANA: Ja we do have representation there. I think another point I just need to make on that, our actions also go with our capacity because where you monitor the public hearings in Parliament you literally need to have somebody sitting there everyday or everyday the Portfolio Committees sit. When you need to write letters and petitions and memorandums you also need a lot of, there's a lot of time invested so all our actions go with what we want to achieve. So if there's a picket in Parliament we're going to have a picket at the Provincial Legislature it goes with a lot of work leading up to that so we can't do 10 things at the same time because we're also a committee organisation and we still need to educate ourselves with whatever action we are going to take.

MR ARENDSE: Is it your, or let me ask you would you agree or do you accept that the Khayelitsha community, probably like all other poor and disadvantaged communities throughout the country especially what is colloquially referred to as "townships", the community is angry, is frustrated, do you agree with that?

MS MLUNGWANA: Yes I agree with that.

MR ARENDSE: And they're angry and frustrated about a number of things, about that we've heard here quite graphically how the police treat or mistreat people.

MS MLUNGWANA: I agree with that.

MR ARENDSE: Some police and there's other issues about the street lighting and about the toilets that's obviously feeding crime because especially women like Ms Beka in the Makhaza case who has to walk to a toilet and when she gets there her cell phone is taken and she's robbed. Those issues for as long as they stay there this anger and frustration or that level of anger and frustration is going to stay there isn't it?

MS MLUNGWANA: I agree that people are frustrated but I don't understand if you're saying as long as everything is the way that it is now people will continue to be angry, if things stay the same.

MR ARENDSE: Yes because what I want to put to you is really that apart from instances where, and quite rightly it's been pointed out there are instances where police ill-treat or mistreat citizens which is a violation of their constitutional rights, at the end of the day you can improve as an organisation your relations with the police. We have heard a number of recommendations

being made training especially one of them, diversity training, other sensitivity training, all that is that really going to help the situation here in Khayelitsha while these other myriad of...(intervention)

MS MLUNGWANA: Yes it will because I believe the organisations are still trying to get the other stakeholders accountable for their respective responsibilities so I think it will.

MR ARENDSE: But I suppose what you and I have both agreed with from the outset is that it involves an integrated, it's an issue that's interlinked, interwoven and integrated and the approach must also be the same.

MS MLUNGWANA: Yes I agree but like I don't know if you're asking if because we have so many problems so we can't solve one and people will be fine.

MR ARENDSE: No

MS MLUNGWANA: But I do agree that we have a lot of problems and all of them need to be, there needs to be a resolution to address all of them and there needs to be an integrated approach. Again the reason I'm asking that is that each sphere again still has its own mandate and responsibility so that's why I'm saying we have all these problems, there are many but each sphere like the SAPS still have their own mandate, the City of Cape Town still has its own mandate and we can still get each person accountable for the bits they have to do in this integrated plan.

MR ARENDSE: Now I guess what I want to put to you is for example arising from this Commission the recommendations are made, it's accepted by the Minister, it's accepted by SAPS we improve training, the police response time is better, there's more police, more police stations, there are more patrols and visibility and so on, the police treat people with respect and when they log a complaint they log it properly, they investigate it you don't have some of the issues that have been raised by some of the witnesses. Assuming all that is done but you still have a problem with the street lighting or some large areas especially in the informal parts where the Commission was taken to then it works and then it doesn't work. Or there are issues with the toilets, the toilets are locked held by one family member who is not around or is sleeping and so on so you've got to go onto the N2 one of the witnesses said, I think it was Ms Soldaat that you have to go there. Those issues are still going to remain aren't they if they are also not addressed?

MS MLUNGWANA: Correct.

MR ARENDSE: Madam Commissioner as I pointed out last time Ms Mayosi has sensibly anticipated a number of the questions that have been posed in writing I'm not going to traverse them again. I just want to check with my colleague if there are any other questions. Thank you Madam Commissioner I've got no further questions.

NO FURTHER QUESTIONS BY MR ARENDSE

COMMISSIONER: (Off mic)

MS MAYOSI: Yes just one or two questions in re-examination Madam Chair.

RE-EXAMINATION BY MS MAYOSI

MS MAYOSI: Ms Mlungwana on the question about the SJC's interactions with the Department of Community Safety you're aware isn't that right that the participation or the interaction of SJC, TAC and the other complainant organisations with that Department is well documented and is part of the court record. For example, are you aware that on the 23rd September 2010 the SJC actually met the then MEC for Community Safety Mr Albert Fritz?

MS MLUNGWANA: Ja.

MS MAYOSI: Then again the next month a letter was written to Mr Albert Fritz regarding the safety issues in Khayelitsha. There is also a statement of Thandokazi Njamela are you aware of what she says about her interaction with MEC Fritz?

MS MLUNGWANA: Which one?

MS MAYOSI: Thandokazi Njamela who you will recall was shot in the tavern.

MS MLUNGWANA: I know ja I know.

MS MAYOSI: Her statement comes before the Commission to the effect that MEC Fritz did in fact go and visit her after her experience so is it correct that there have not been sufficient interactions between DOCS, SJC and the complainant organisations?

MS MLUNGWANA: That's why I said there has been communication but because it was not documented in my statement but I am aware of the communication we had. That's why I was saying I couldn't give him a specific to say this is what we did but I know there has been communication that's why I put it out there that I was aware of all that.

MS MAYOSI: Yes and this is to be found in the affidavit of Mandla Majola in the High Court record.

MS MLUNGWANA: Ja.

MS MAYOSI: That is all, that is my only question Madam Chair.

NO FURTHER QUESTIONS BY MS MAYOSI

COMMISSIONER: Thanks Ms Mayosi. Advocate Pikoli?

MR PIKOLI: Good morning Ms Mlungwana.

MS MLUNGWANA: Good morning.

MR PIKOLI: Can you tell the Commission a bit more about the role played by the CPF, how it interacts with other structures within the community?

MS MLUNGWANA: I know, like I said we haven't had that much relationship with CPFs but I know people have had complaints like people, leaders in the communities and different other organisations that had comments as to how they are working. They have meetings and they're irregular, they have meetings and the meetings are not held, we have also been to a couple of meetings which never took place. I know they have different forums where they're supposed to have different stakeholders in those forums but we've never participated in those forums. I know TAC was participating in some of those I think they would give a better understanding as to what really happened but for some of our members who were representing their respective communities they have had really uncomfortable, they are not satisfied as to what happened in those stakeholders' meetings. They were supposed to listen to community challenges and be able to communicate those challenges to the police and *vice versa* and apart from where people are able to express their concerns and the police could have that data readily available. But some of the people who have attended those meetings a lot of times that has never really happened you get there and it's people kind of defending instead of having a community platform where you tackle and discuss challenges and possible or positive ways forward.

MR PIKOLI: So as the SJC you haven't had a direct communication with any of the CPFs?

MS MLUNGWANA: No we've had communication to attend to participate but I think it fell, that's why I'm saying if maybe it confirmed everything that we already knew because we did make times to go to some of their meetings and

they never really took place and we eventually gave up because there weren't fruits in it so you can't always send people to a meeting and then it doesn't happen and hope to get something out of it.

MR PIKOLI: Okay thank you.

MS MAYOSI: Just to allay Commissioner Pikoli's concerns regarding the SJC's relationship with CPFs the evidence of Mr Joel Bregman of the SJC will cover that more fully next week.

COMMISSIONER: I just have a further question similar to the question of my colleague which is that is it your sense that closer cooperation between the community and the police but a broader selection of the community with feedback to the community would assist the situation?

MS MLUNGWANA: Can you repeat the question please?

COMMISSIONER: Yes, is it your sense that closer cooperation between SAPS and the community but in a kind of open transparent way where there are public meetings would be a more helpful way for the police to build a relationship with the community?

MS MLUNGWANA: I think it would be very helpful.

COMMISSIONER: One of the pieces of evidence that I have found disturbing is the evidence given by Dr Josias that although the police were aware in August 2011 that there was a serial rapist operating for a year, the police worked on that case without telling the community do you have any comment on that?

MS MLUNGWANA: I think that evidence is very disturbing because I do feel if the community was aware like for example TAC, Philani, SJC they have community advocates and people who will door-to-door to raise awareness on different issues. I think had the community been aware of the possible serial rapist, whether it existed or not, they would have found a way to protect the children or to try to make sure that they educate the communities because there's organisations that are doing a whole lot of work. They go to people's homes everyday and they invest in circulating material, pamphlets that are educational but also information of where people can get assistance and I feel we couldn't have had the additional that added to 21 rapes if the community would have been aware. I do feel the community would have done everything in their power to ensure that they protect their children or even that they follow the lead of actually leading the police to who was responsible. I think everyone who – I don't want to say they should be embarrassed – but I do think they should really feel that it is not just the serial rapist who was at fault in this case but even the police should be accountable for the other children because that for me was very disturbing.

COMMISSIONER: Thank you very much indeed for your evidence and for being available again early this morning it's been most helpful to have your evidence before us and you may now stand down as a witness.

WITNESS IS EXCUSED