

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

Lillian Artz

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COMMISSIONER: Good afternoon. Good afternoon Prof Artz, welcome to the proceedings of the Commission. We have got one or two small admin matters to attend to and then we will get to your evidence.

MS ARTZ: Of course, thank you.

COMMISSIONER: Mr Arendse, thank you very much. I gather that you had a look through the dockets and the proposal of the Commission which I think may have been communicated to you and to Ms Mayosi is that the docket has been made available to the representatives of the complainant organisation legal representatives only and that you will extract from that such information as you think is appropriate. You will extract from the docket such information as you think it is necessary; being careful that - I understand that they haven't been entirely fully redacted and in some cases you would need to be cautious to make sure that names to not be passed on are not passed on, but the dockets there are the only copy that the Commission has so we would need them back so I would be happy to give them to you today and if you could return them on Monday or Tuesday that would be fine, but the full docket should not be handed on to your clients. I think what you should do is you should extract from it such material and information as they require. Is that okay?

MR ARENDSE: Yes.

COMMISSIONER: Some of the dockets are still functioning pending dockets.

MS MAYOSI: Madam Chair I would like to just take instructions from client and see if that arrangement ... (intervention)

COMMISSIONER: Of course, of course.

MS MAYOSI: That suggestion is okay.

COMMISSIONER: There are instant instructions, excellent.

MS MAYOSI: Yes, yes.

COMMISSIONER: No that is good and I mean obviously we are I think all open to working as a team on this so if there are particular things that you want to come back and say "we would like to be able to do that", I think come back to us, come back to SAPS. We are not trying to be unduly restrictive. It is just the case of a practical way forward. Thank you. Thank you Mr Arendse. Thanks Ms Mayosi.

Then we have the evidence of Prof Artz this afternoon. Am I correct Prof Artz, I am assuming that you are going to testify in English?

MS ARTZ: Yes.

COMMISSIONER: And you are aware that the proceedings of the Commission are in public and that both your name and the contents of your evidence may be made public both here and through the media?

MS ARTZ: I do.

COMMISSIONER: And you have no objection to that?

MS ARTZ: None whatsoever.

COMMISSIONER: I would like to put you under oath or affirmation. Do you have an objection to taking the oath; would you prefer to take an affirmation?

MS ARTZ: No I am happy to take the oath.

LILLIAN ARTZ: (Sworn States)

COMMISSIONER: Thank you very much. Ms Mayosi.

MS MAYOSI: Thank you Madam Chair.

EXAMINATION BY MS MAYOSI:

Prof Artz you are an associate professor and director of the Gender Health and Justice Research Unit in the Faculty of Health Sciences at UCT, is that right?

MS ARTZ: I am.

MS MAYOSI: You earlier I think in 2012 made an earlier statement for the Commission, is that right?

MS ARTZ: That is correct.

MS MAYOSI: And you have recently had opportunity to update that statement and submitted one in 2014 is that correct?

MS ARTZ: That is correct.

MS MAYOSI: Can you tell the Commission about your experience in your field?

MS ARTZ: I have been working; I am a criminologist. I have been working in the area of criminal justice, criminal law reform and health reform for the past twenty years. I am an associate professor. I specialise in domestic violence, sexual offences; other forms of violence against women, incarcerated women, torture and ill-treatment in places of detention and police reform in the fragile and post-conflict states.

MS MAYOSI: And what has been your relationship, your working relationship with the organisation known as Mosaic?

MS ARTZ: I have been working with Mosaic for about almost fifteen years in various capacities mostly through training, research development, co-partnering on research studies as well as conducting studies on behalf of Mosaic.

MS MAYOSI: But your statement you made - the statements that are before the Commission are made in your personal capacity, is that right, and not on behalf of Mosaic?

MS ARTZ: I am not speaking on behalf of Mosaic today.

MS MAYOSI: What reports did you have access to for the purposes of compiling your statement for the Commission?

MS ARTZ: The ones that I draw on specifically are the task team report and I also have had sight of another affidavit that is submitted and we adjust next week and there was a third. Sorry if you will just give me a moment.

MS MAYOSI: You also had sight of the SAPS annual report and crime statistics ... (intervention)

MS ARTZ: Yes, crime intelligence ... (intervention)

MS MAYOSI: Is that correct?

MS ARTZ: Yes. That is correct.

MS MAYOSI: You've prepared a PowerPoint presentation. I think I will then allow you to just present your report and your statement to the Commission in that way.

MS ARTZ: Okay, thank you. If you will let me begin, we've discussed my background and biography so I won't reiterate that for the Commission. It is

already in the affidavit. I am going to start by trying to contextualise crime statistics and particularly as they relate to domestic violence and sexual offences. I do not think it is - yes, I think it is accepted that crime statistics are contested. There are issues around reliability and the gauges that are used to measure police performance through crime statistics. In terms of rape and domestic violence I think it is widely accepted amongst scholars and researchers that rape and domestic violence are underreported to the police. I think it is also understood within the crime prevention sector that crime prevention is incredibly difficult to measure and that reduced crime rates do not necessarily equate to effective crime prevention and that can be quite a tenuous thing. In terms of sexual offences, prevention by the police it is extremely difficult unless committed within a family context where there is ongoing contact between the victim and the perpetrator and crime prevention or social crime prevention efforts are largely focused on school-based programmes, community and social development programmes and community infrastructure programmes. In terms of domestic violence the term intervention is probably a term better used to describe the role of the police in domestic violence cases because once an active domestic violence comes to the attention of the police they can intervene and then reduce the likelihood of happening again. I reviewed the SAPS annual report on crime statistics for both 2011/2012 as well as for the year 2012/13. What that report does in terms of issues relating to sexual offences and domestic violence is it tends to cluster these offences in terms of a concept that they call "contact crimes". Those crimes are crimes that they define as having physical contact. It usually have a violent course of nature between perpetrators and victims and they include murder and attempted murder, sexual offences, assault GBH and common assault, aggravated robbery and other robbery under that cluster and domain of contact crimes. In their reports the last two years of the reports they argue that contact crimes collectively accounted for 29.9% of South Africa's reported serious crime in 2011 and 12 and then 33.7% in 2012/13 so it is almost a third of all crimes committed in South Africa, reported to be committed in South Africa. The use of this notion of a cluster crime is a little bit of a difficult one to work with because it clusters all sorts of interpersonal crimes together. It doesn't usefully disaggregate what specific offences are taking place and it doesn't align with current codifications putting certain definitions of sexual offences for instance and it doesn't give us much of a sense of the nature, the severity of offences that are taking place. The 2012 crime and research statistic report provided some interesting statistics around sexual crimes in Khayelitsha specifically and it has argued that there is a decrease since 2004 from 588 reported offences to 249 reported cases and this in terms of the statistics reflects a 58% decrease of reported incidents during this period. This report also showed a 90% decrease in reported cases of neglect and ill-treatment of children. This may be a result of more specialised services not only being provided by SAPS but other organisations in the area focusing more specifically on child sexual offences for instance and the report also showed from that period from 2004 a 35.4% decrease. I find these statistics a little bit difficult to interpret particularly since we have passed the Sexual Offences Act which creates almost 60 new sexual offences as well as the Children's Act in 2005 which also creates a range of offences around child abuse and maltreatment. I am curious as to why the statistics have dropped during this time period when such significant pieces of

legislation that creates new offences categories have been promulgated.

I provide in my affidavit some reasons for the possibilities, some possible factors around reduced levels of reporting in Khayelitsha in particular. One of the reasons is that there was only police station in Khayelitsha during the initial reporting period. Harare and Lingeletu -West were established in 2004 so you might be seeing a distribution of cases across stations and therefore a reduction at the Khayelitsha Station. Our research has shown that rape complainants might be reluctant to report sexual offences cases. The police may be turning away rape complainants or discouraging them from report incidences; that station level quotas are being placed on a number of rape cases that police will accept. There is a possibility that sexual offences cases are simply being reclassified as other lesser offences as a result of the Sexual Offences Act. There is a possibility that complainants' complaints are being withdrawn by either the police or the complainants shortly after reporting and before entering the CAS system. The cases are not being registered in the CAS system or they are being referred directly to the FCS's without first being registered at the Khayelitsha Station so these are a range of possibilities and some of these have emerged through research.

What does low reporting reflect? What it doesn't reflect is that sexual offences and domestic violence cases are declining. It also does not reflect that crime prevention methods are becoming more effective. We cannot make that definitive link between a low report rate and a decrease in crime and again given the extent of or the extended definition of rape with almost 60 new definitions of sexual offences in the Sexual Offences Act I find it very difficult to believe that we are actually not seeing increased rates of reporting at these stations.

In terms of domestic violence statistics it is well recognised in the sector that accurate prevalence rates of domestic violence are very difficult to ascertain. Firstly and most obviously domestic violence is not coded as a separate criminal offence. When an active domestic violence is committed criminal charges may involve assault, assault GBH, rape, attempted murder, so on and so forth, so the actual act is sort of diffused into another number of different crime categories. The unfortunate part of this is that domestic violence often happens between two people or within a family over a period of time. There are often multiple incidents that take place over a period of time and increasing severity and we don't have a good check on the aggravation of these offences. The underreporting of domestic violence incidences to police is also another factor that makes it difficult to ascertain accurate domestic violence statistics. One of the most prevalent reasons we have been finding is the police's tendency to refer domestic violence cases directly to magistrate's courts so that complainants secure protection orders so cases are not being registered at police stations. They are being directly referred to the courts and therefore no recording and documentation system has been opened. There is a poor and inconsistent recording of incidences of domestic violence at the station. I am going to speak a little bit about what the processes and procedures are that are required by the law in terms of reporting and recordkeeping and the SAPS in their own words said that police cannot do much to prevent crimes of this nature because:

- (a) prior information about such crimes is usually not available;
- (b) these crimes mainly occur in private places where direct

policing does not occur.

That however does not address the fact that our legislation currently requires that all incidences of domestic violence that are reported at the station are recorded.

So what is recorded in the annual report? The numbers are staggering. You will see that 180 537 women have been affected by serious crimes ranging from murder, attempted murder, assault GBH, the highest being common assault, sexual offences and children - very high levels of assault GBH, common assault and sexual offences. These again the criteria are not or the crime categories aren't disaggregated so we don't know what the natures of these offences are.

In the addendum to the SAPS 2011/12 annual report the SAPS reports that crimes against women and children make up 30% of all contact crimes nationally. In my opinion that figure is a good proxy for Khayelitsha to be able to develop strategies to address and intervene in cases of violence against women and children. They also state that as far as the sexual offences are concerned a remarkable 40.1% of all of these cases involve children as victims. We have got very, very high levels of violence against children.

They further go on to say that 14%, 14.6% of murder cases, 16.3% of attempted murder cases and 29.8% of all assault GBH cases which are very serious assault cases involve adult female victims and almost half of all common assaults were committed by or against rather adult women. Nearly half of sexual offences involve all adult women as victims.

I just wanted to give you a background as to what sort of the statistical outlook of violence against women is. I think we have a good proxy even with possibly questionable national statistics. We believe that the rates are much higher than what is being produced here and that is mainly because of how reporting rates work. We can only document cases that are reported and we have seen through research it has been argued that for instance in rape cases anywhere between 1/9 and 1/20 rape cases are reported but it is a useful proxy for us to understand the scope of violence against women and children in South Africa.

I am just going to briefly move to the legal framework that governs domestic violence cases and the role of the South African Police Service in particular. It is an important framework to set out because it is critical that SAPS are compliant with this legislation. In my opinion the legislation is a very progressive piece of legislation. The regulations and instructions that go with the legislation are very clear and I think we can address a lot of the issues that we experience at station level if these instructions were simply followed. So the legal framework surrounding domestic violence cases and the Domestic Violence Act, the Domestic Violence Act Sections 2 and 3 specifically set out duties on the police to assist and inform domestic violence complainants of those rights. These are positive legal duties. These duties are mandatory meaning there is no discretion on the part of the police in terms of whether or not they register complaints, provide information to complainants, follow up on these complaints and these duties are further articulated in quite comprehensive detail under National Instructions so there should be little excuse for non-compliance in this regard.

In terms of Section 2 which really deals with the recording of an incident of domestic violence indicates that any member of the South African Police Service

must at the scene of an incident of domestic violence or as soon as possible thereafter render such assistance to a complainant as may be required in the circumstances including assisting or making arrangements for the complainant to find suitable shelter and obtain medical treatment if reasonably possible to do so to hand a notice containing information as prescribed to the complainant in the official language of the complainant's choice. This is what they call a notice and it is a one page very informative notification to the complainant explaining what his or her rights are under the Act and if it is reasonably possible to do so explain to the complainant the contents of such notice. These are not sort of arduous duties imposed on the police.

In terms of Section 3 a police officer may without warrant arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of domestic violence. In terms of the Domestic Violence Act domestic violence is defined quite broadly to include physical abuse, sexual abuse, emotional, verbal and psychological, economic abuse, intimidation, harassment, stalking, damage to property, entering into the residence of complainant or any other controlling or abusive behaviour towards a complainant when such conduct harms or may cause imminent harm to the safety, health or well-being to that complainant. This is an incredibly useful provision that has been put in the law. Increasingly we are seeing more sort of cyber bullying and texting and other forms of mediums that we did not anticipate when this law was being drafted so it captures all of those behaviours that can happen within the domestic context.

The Domestic Violence Act does not criminalise domestic violence because we have a Domestic Violence Act does not mean that we have a new offence called "domestic violence". As I had said previously acts of domestic violence fall under different criminal offence categories. What the Domestic Violence Act does is it provides the issuing of a protection order. Domestic violence is only criminalised when that protection order is breached or violated by the person with whom the order has been issued against and in terms of the act you can get a protection order. You can lay a criminal charge or you can do both. This legal context is going to become relevant when I start speaking to some more of the empirical findings. You can apply for a protection order pretty much anywhere the complainant lives or works. You are meant to in theory be able to apply for after-hours applications as well as on public holidays or weekends.

I have just done a sketch here, an organogram of what the process entails. You will see an act of domestic violence is committed. On the left you will see the criminal process and on the right is the application for the protection order so you may take either of these two trajectories; two of these legal options if you have been a victim of domestic violence or you can do both.

Who can apply? Any complainant, a child or any person with material interest; that includes numbers of the South African Police Service and other peace officers may apply for a protection order on behalf of an applicant.

Where? At the magistrate's office and it basically involves filling out an affidavit and a form which sets out the range of abuses that have taken place. It is a very simple process to go through. It is quite expedient these days. So it should be something that should provide pretty immediate protection to complainants.

The National Instructions in terms of managing domestic violence is pretty key to what should be happening on the ground. The Khayelitsha Police should

have the following information in hand in relation to domestic violence cases. The first one of these things is a “domestic violence incident form” which is also known as the SAPS508A. The National Instructions are very clear about the purpose of these. They say that members must fully document their response to every incident of domestic violence on one of these domestic violence incident report forms regardless of whether or not a criminal offence has been committed and then it must be filed on a monthly basis.

The SAP508A form is a useful form. There are a couple of issues with it that make it a little bit difficult to fill out but for the most part this form provides the particulars of the complaint, a description of the incident when it occurred; what kind of assistance was rendered by the police. This is absolutely critical and these forms should be informing us of the nature of assistance that victims of domestic violence are getting at our police stations. It should help us start to map what those referral strategies were; what decisions were taken; whether she or he was assisted to get medical assistance; assistance to secure belongings. It should provide us with the beginning of that map of that criminal justice service and it also requires the particulars of the member who attended or assisted the complainant, any non-compliance issues that it might have raised.

The form is meant to be filled out, as I said previously, every time an incident of domestic violence is reported regardless of whether there is a criminal charge, although some police stations do fill this document out I have seen no evidence in my research to date and I could stand under correction, about how they are compiled or analysed or brought together or disseminated on a provincial or a national level. These incident reforms should provide us with a pretty accurate picture of what the prevalence and incidences of reported cases are at police station level.

In briefing the Safety & Security Portfolio Committee in Parliament the ICD reported that only 37% of domestic violence incidents reported to the police resulted in victims willing to lay criminal charges and sadly many of those charges were later withdrawn. That is an important point in the sense that a lot of complainants do not choose to lay a criminal charge but they have the legal option of doing that and the difference between ensuring that complainants have that information, are equipped with that information to lay a criminal charge and their decision not to proceed with criminal charges is something that we need to look into a little bit more carefully.

Other requirements of the National Instructions, so in addition to this incident report which is the 508A we have the SAPS 508B and that is the domestic violence register which is almost a summary of what is contained in the 508A so if your 508A haven't been completed you cannot really transfer that information to the 508B, but I do understand that often the registers are filled out but not the incident forms.

The National Instructions also require that an open dockets or file with a copy of every protection order and warrant of arrest that is received is filed in a separate file and that must be open in accordance with the registration and record control procedure which forms part of the record classification system so this is a mandatory duty on the police again in terms of record keeping, so let's not be mistaken that it is not clear and there also should be records of any complaints against SAPS members in relation to the Domestic Violence Act filed some place at the station.

Section 4.3 of the National Instructions expressly states that if a case of domestic violence is called into a SAPS community service centre the person accepting the call must without any unreasonable delay ensure that a police vehicle from the appropriate radio control unit or station is dispatched to the complainant to attend to the matter. Again there is no discretion involved here; also must ensure that the crew of such vehicle is informed whether:

- (1) Any violence or threatened violence is allegedly or has allegedly been involved in the incident, and
- (2) who the complainant is.

So once again we've got very well articulated instructions for how domestic violence cases that are reported to the charge offices or the CSCs must be managed.

In terms of providing information to domestic violence complainants Section 10(1) requires that a notice is given to the complainant, Form 1 that explains the Domestic Violence Act and the legal remedies available within it and Section 10(2) specifies very clearly what these rights are: lay a criminal charge, get a protection order or do both; and it also specifies that it is important to inform the complainant that laying a criminal charge is not a prerequisite for getting a protection order, okay.

In terms of record keeping in the National Instructions Section 14(1) every Station Commissioner must keep a record of the number and particulars of complaints received of any members under his or her command in respect of failure to comply with any instructions in terms of the Domestic Violence Act. It must also keep a record of the disciplinary proceedings instituted as a result and the steps taken as a result of these recommendations so if there has been any dereliction of duty or non-compliance with the act or the instructions at each station there should be a full record of what these actions are.

Some of the challenges just broadly that we have seen sort of over the course of the research, over the course of our studies is that the recording of domestic violence cases and the registers are not standard practice. The ICD has reported that the recording of incidences on the SAPS registers, they agree that it is the most accurate information but if you look at the ICD reports one of the things that continually comes up is the SAP508As not being filled out and they re-emphasise that it must be filled out after every incident is reported.

I am going to quickly move on to some of the research evidence. I am drawing some of my conclusions here today based on a study that I conducted with Mosaic. Here we introduced 365 domestic violence applicants over a three month period in Khayelitsha, Bellville, Wynberg and Philippi. We secured consent of applicants on the day they came to apply for a protection order. We thoroughly explained what the research is about. We were asking complainants if they did not for some reason return to finalising the protection order could we possibly call them back and ask them for the reasons why they chose not to proceed with the process. We had an incredibly high consent rate of non-return, 94% agreed and almost all of those applicants that we spoke to, when we phoned them were very excited to hear from us and thought it was part of the court support process that there was a follow-up call being made by Mosaic. It was a semi-structured interview in which we asked a number of different questions. After the study was complete Mosaic took the research forward, interviewed another 503 applicants from four additional jurisdiction, Bishop Lavis, Paarl, Cape Town and Wellington and this is where they have - they offer

the court support services because they wanted to get a gauge of what was happening in those communities as well.

Just in terms of policing domestic violence really this research was about attrition of domestic violence cases and by attrition I mean what happens with cases from the point that something is reported to the point that they are finalised, and attrition refers to the number of cases that fall out of the system and we conducted the research to find out why; whether it was at a policing level, a court level, whether there were structural barriers, individual personal barriers or just preferences not to proceed with the process. The basic question was often asked by magistrates and our work with magistrates, why do women not return to court or the complainants not return to finalise their protection orders. They asked a very simple question. We tried to produce a very simple response to that.

Just in terms of the data the total number of applicants that were assisted by Mosaic is in the left-hand column. The total number of interviews, so these are the people that were assisted; on the right-hand side the total number of applicants are those applicants that did not return to court and then the percentage of applicants interviewed for non-returns. I have made a note to say that although the number of interviews from Khayelitsha was proportionately smaller relative to its estimated population profile than the other three jurisdictions, the interviews were quite evenly distributed across the four jurisdictions.

What did we ask applicants who did not return to finalise their protection orders? We asked them questions about their engagement with the criminal justice process, past and present; their experiences with the police and the courts; the extent to which they found the system helpful in assisting them with complaints of domestic violence. We were careful to also explore areas which worked, systems and methods and approaches taken by police and clerks and magistrates and prosecutors and support services of things that worked for them. Our findings reflect the outcome of the initial four districts. We found that victims of domestic violence reported going to the police after the most previous incident of domestic violence so they had been to the police before for assistance and 34% of them had gone after this most recent incident. In those that went to the police after the very last incident, less than 10% found the police helpful and on an average rated the assistance of the police at 5 on a scale of 1 to 10. We also found very low levels of arrest from previous and current incidences and of the population that we had spoken to only 5% had said that an arrest had been effected in the domestic violence cases.

You will note the table below. It refers to assistance from SAPS. These numbers will not add up to a hundred because they were offered various options in terms of what happened. In 55% of the cases applicants or complainants were informed that they could get a protection order. In only 19% of cases so in only one out of five cases were applicants or complainants told that they could lay a criminal charge at the police station. In only 25% of cases were protection orders served but also bear in mind that sheriffs do some of the service so that number would be contained within; and only in 5% of the cases were the accused arrested without a warrant as allowed by the act.

This is kind of similar to research that we have done over a period of time since 2001. We were seeing that some of the kind of key failures in terms of police service to victims or complainants of domestic violence the top three are

failure to serve a protection order; failure to arrest a respondent for committing a criminal act of violence or the breach of a protection order and the failure to investigate criminal cases arising from incidences of domestic violence.

The subsequent attrition study that was conducted by Mosaic in the additional four jurisdictions which involved an additional 500 plus respondents found that in 20% of cases the complainants were told by police that in addition to getting a protection order they may also lay a criminal charge so we did see a slight increase in the number of complainants that were told that they could lay criminal charges. 64.3% reported that the police did not tell them that they could lay a criminal charge. 87.3% said that they were not given a notice with information about their rights. That number is staggering. It is one sheet of paper with incredibly valuable information in it. That could easily be disseminated at the stations. There is no reason; it is a very low resource, very high impact process.

Of the 87 Khayelitsha interviews with DVA applicants of this study 27 cases - there were 27 cases in which there was no return of service of the interim protection order; that is 31% of cases in which SAPS was meant to serve the interim protection order and the notice to appear and those weren't executed in almost a third of cases. When we asked about the reasons why these orders weren't served the complainants said the police couldn't find the respondent to serve the paper; they had lost documents in the process and similar sort of systemic administrative issues at the police level.

We also have an issue here in the Western Cape around service more generally. In our reading of the Domestic Violence Act is that it doesn't require personal service; that it can be served to any adult person over the age of 16. However what is happening in practice is that the applicant is often the one that is in the house at the time that the protection order is being served. The order gets served on the applicant who then has to serve it on the respondent, which is a totally untenable situation. Applicants have said to us that they have been told that they must now serve - they have a legal duty to now serve this order on the person who they have taken a protection order out against. It is just a untenable situation.

Other complaints that were derived from these findings in the Khayelitsha jurisdiction being told to go to court for protection when a complaint was made at the police, being told to make this order, send the abuser out of the house for the safety of the children, even after the accused has threatened to killed the complainant and her children; being told to go back to another police station even though the complainant worked in the area that she was trying to seek assistance from; being given false information; was told that he doesn't have to go to court as her husband was arrested for assaulting her which was literally not the case; being told - this was on a weekend - that there is nothing that the police could do. She has been a victim of domestic violence: "Go to the court on Monday and go get yourself a protection order." This is not uncommon, the referral of cases from stations to the magistrate's courts are not uncommon and in my opinion might reflect why we are not seeing incident reports at the police stations. Once a protection order is secured it is my opinion that police are interpreting that the situation has been just at the magistrate's court; there is no reason for them to fill out and incident form now because the case went to the court first as opposed to the first report at the police station; not being assisted with finding shelter, the failure of police to arrest in the current or in relation to

previous incidents and there was a number of cases where complainants were told to simply go track down, find where the respondent lives. Another incident which I think is an affidavit, the complainant was told to waive down a patrol vehicle to try to get one of the members on patrol to help assist her, so services is definitely a problem and there seems to be quite a bit of reluctance. Again I don't think this is an insurmountable problem in terms of service. I do believe that certain mechanisms and very positive mechanisms have been put in place in other stations in order to assure that daily service is occurring of protection orders.

Mosaic in discussions around this affidavit spoke about their evidence on the ground and named sort of or pointed out several factors that they struggled with in terms of policing in Khayelitsha; the first being the failure of police to effect warrants of arrest where there were breaches of protection orders or to arrest within a reasonable period of time; the failure of police to attend or to dispatch vehicles where domestic violence has been reported; the lack of knowledge about the Domestic Violence Act and again that has largely to do with sending complainants to the magistrate's court before any assistance is rendered at the station; the failure of the police to refer to shelter facilities; to provide rape and domestic survivors with continuous updates about what is going on, whether an arrest has been effected; whether perpetrators whether they have made contact; whether they have embarked on an investigation of the matters so there seems to be quite a lot of sort of miss-communication or no communication regarding how the cases are being managed or handled and there has also been a lot of inappropriate referral of clients. The opinion was that there are a lot of complaints so don't follow into Mosaic's domain and lots of cases of the destitute, of the mentally ill and other people who required specialised services were just referred to organisations instead of being dealt with at the police station directly.

Other problem areas that we identified, the removal of firearms particularly from members of SAPS who are accused of domestic violence themselves.

Section 17 dockets - Section 17 dockets are dockets where there has been a contravention of the protection order. There is a copy of the protection order but other dockets / criminal dockets there are no protection orders sitting in those dockets. Ongoing compliance issues in relation to the violation of the protection order. One of the complaints that came up by police members themselves is that they are never informed about when protection orders have been set aside or varied by the courts so they are never kind of sure of what the status of those protection orders are and then I think this is a national problem about how after hours applications for protection orders are managed.

Some of the systemic issues that were raised were the difficulties of police in finding complainants and perpetrators in that community where residential addresses are not systemic or continuous. The lack of adequate cellular phone airtime afforded to members of SAPS. We were informed in this research by the respondents that cell phone airtime is capped and often run out at the end of the month so trying to assist complainants when they are out in the field so to speak becomes different. The lack of ongoing and station level training that is relevant to the day-to-day practices surrounding the management of domestic violence and sexual offences cases and equipping SAPS with very sort of basic procedural skills of dealing with domestic violence and sexual offences cases in a way that is you know some can be expedited a little quicker than others; the

lack of vehicles is an issue that has been raised continually through my career as a researcher in terms of attending to cases offering complainants assistance to seek medical attention and so on and so forth and it is also well documented in a number of other studies and then a little bit more of a contentious one which I will address later is the reported pressures to keep crime statistics low. We don't want stations to reflect high levels of rape and high levels of domestic violence and I am going to speak to the issue of keeping the rates low and then we're done.

The ICD, I examined the ICD reports from 2004 to 2012. These issues over the last eight to nine years have come up over and over and over again, but the key ones that ICD keeps identifying in terms of non-compliance to the Domestic Violence Act includes no updated lists of service providers to attend to complaints, which makes sense. If you are going out to an incident of domestic violence and one of your duties is to ensure that they are referred to an appropriate medical facility or psychosocial services or whatever they might be you might want to know what those are and have that information in your possession.

No copies of National Instructions available: the National Instructions are the Bible of the implementation of the Domestic Violence Act for lack of a better term. They are very clear, they are incredibly comprehensive. You know you could probably do a relatively good job of managing cases if you haven't been trained on the act yet just by following these instructions so there is no reason why these shouldn't be available at stations. Again domestic violence incidents are not recorded in the register. The SAP508A forms are not being completed. Again this is kind of a national issue. The monthly procedures of filing the DVA incidences are not maintained and there are very few systems to ensure that they are maintained. Protection orders are not being served. Copies of protection orders are not being filed. Copies of warrants of arrests that are received are not being filed. That is a huge issue and it is a huge systemic barrier for why women retract from the criminal justice process is when their documentation, their copies of the suspended warrant of arrest, their copies of their protection orders just simply go missing. It is quite a profound reason why they retract from the process and almost entirely within all of these ICD reports, training on the domestic violence is repeatedly recommended.

I am going to move on to the task team report. I was asked to review the task team report. I don't have the number of the report.

COMMISSIONER: We do have a copy of the report.

MS ARTZ: The copy of the report, okay, you have it.

COMMISSIONER: Yes, thank you.

MS ARTZ: Okay and I generally found the report to be relatively unbiased of the systemic and procedural challenges. I thought it to be relatively fair and I think my research and the research of others in this area could support some of these structural issues that are problematic but there are a few issues that stood out for me within this task team report that I would like to address with the Commission.

The first one is in relation to paragraph 3.7: "The five areas of systemic failure of police processes." That includes investigation of crime, taking of statements, apprehending of suspects; feedback to complainants and rendering services in a professional manner.

It tries to set out what the processes and procedures are in relation to

these in very specific detail but given that less than 20% of domestic violence complainants were even informed that they could lay a criminal charge, I am a little bit sceptical that these very detailed procedures are actually followed when we can't even get cases to be received so I am feeling a little sort of cautious about suggesting that that process is as exhaustive as it is set out in the report.

I think that research in the area of domestic violence and sexual offence does continually demonstrate that the most basic policing functions are not being carried out, taking a good statement with sufficient information that involves all the details of the complainant and the suspects and the situation and the circumstances behind it; investigations that take extended periods of time, these are very, very basic policing functions that are not being executed in domestic violence and sexual offences cases so I do find it difficult to believe that this exhaustive reporting and investigation process is taking place in every case. That is reported at station level.

The other issue that stood out for me was paragraph 6.10 and that was the suggestion by the task team that the CPFs are against the actions of the Social Justice Coalition owing to the fact that the Social Justice Coalition comprises of people not residing in and around the Khayelitsha area and I have three central concerns with this statement. One is that my experience with CPFs is that they are not these absolute all-inclusive entities. They involve a range of stakeholders, a range of participants. Those participants move in and out of the CPFs. It is often difficult just getting through an agenda and some cohesion with any given forum meeting. So I have a difficulty with suggesting that these are entities that all have objections to the Social Justice Coalition and their work in Khayelitsha. That a community is against an action because it involves organisations that are outside of the community to me seems contrary to the wide range of constructive development, social justice, social service initiatives and partnerships that are currently occurring in Khayelitsha. Most of those do emanate from outside of the community or promoting the generation of grass roots initiatives within the community and I find it very hard to believe that there is sort of an insider / outsider tension of well-established organisations working in the community and the other thing that seemed slightly counterintuitive to me was that the task team had at the same time highlighted and was critical of the CPS for their questionable contributions to the improvement of police community relations, their lack of community participation and representation on the CPFs, the poor relations between management and CPFs and the poor functioning of the CPFs so on the one hand they are saying there are these cohesive entities that have a social advocacy position on the social justice coalition, yet on the other hand there are these disorganised non-participative unrepresented entities.

The other issue that I spoke to was Section 8.4 was the quality of investigations. Witness statements are not obtained before case dockets are sent to court. Case dockets are withdrawn in court because statements by the arresting officers were not filed in the case dockets and these two issues that I identified in this report feature highly particularly in sexual offences cases. There seems to be some sort of disjuncture between the police and prosecution services in terms of the nature and the handling of evidence in sexual offences cases not to mention the long time periods before reporting and prosecution, often caused by delays in justice at the investigation level.

Section 9 also struck me and it refers to discipline management and the

report reports that between January 2011 and December 2011 291 employees were disciplined in Khayelitsha and also not a dramatic increase in domestic violence and assault GBH cases against members in that time. 205 cases in Harare, failure to comply with the DVA as cited and in amongst these complaints and again notice taken of the dramatic increase in DV and assault GBH cases against members and then in Lingeletu where failure to comply with the DVA is again cited so it seems to be one of the key issues, non-compliance with the DVA not to mention the roll of SAPS members as committing acts of domestic violence and this gives me cause again to reflect on the need for the National Instructions to be clear about what to do in terms of firearms and the possession of firearms of members who have committed acts of domestic violence.

I just want to also make a point that I - in reading this, this needs to be set in context because I actually don't have the specific numbers of members that are within at each of those stations and it is uncertain whether these are multiple charges committed against a member of independent complaints against independent numbers so those statistics don't assist us with that, but I think that they are high enough that we should pause for concern.

Paragraph 9.4.1 was also tremendously concerning and that involved the Victim Support Centres. A lot of efforts in the Western Cape sort of in the mid to late 90s and early 2000 were put into Victim Support Centres creating spaces where victims of crime, men, women and children could come and be supported; have their statements taken in safe space outside of the charge office. These Victim Support Centres were established firstly to deal with victims of domestic violence and sexual offences and children affected by those offences, and slowly over time they were meant to grow to accommodate traumatised members of the community. To me they are - they should symbolise and epitomize community policing. They should reflect what it is that members of the South African Police Service are to be offering community members when they have been a victim of violent crime. They should be client or complainant centred. I was very concerned about all the comments that were made about unsatisfactory condition, needing for an upgrade; that the floors are a safety hazard; they do not conform to any standards set out for the centres and although at one of the stations says that the physical space fits the required standard there is nobody working in the centre so I am presuming that having somebody occupying that centre would make it a centre that is up to standards, so that was deeply concerning.

The second document that I looked at whose name escaped me earlier is the crime intelligence report. The crime intelligence report says that Khayelitsha still remains a dominantly social contact crime station and that this type of crime is less policeable in terms of the convention policing methods, procedures such as focus patrols, roadblocks cordon and search operations and so on and that was a quote of Major General De Kock.

The report also states that social contact crime in Khayelitsha has increased by 16.1% in 2011/12 and 17.5% during the first quarter of 2012/13 and that nearly two thirds of the 16.1% increase in social contact crime is due to a 32.2% increase and common assault.

I need to take issue with the first statement; the first issue about conventional policing methods. I think you know over the last 15 years at least we have pushed community policing models; visible policing models, SAPS has a large social crime prevention unit. I don't think we can attribute the lack of

intervention in cases and the lack of service provision on the fact that it is very difficult to police without these more conventional type of policing strategies. We also have had legislation over the past 10 or 15 years which makes police interventions in certain types of cases very clear that don't require focus patrols, roadblocks and such.

Again I just wanted to caution the statistics. I spoke previously about the reduced levels of reporting that were addressed previously but now I want to talk about what increased levels of reporting might mean as well and increased crime statistics. Increased crime statistics are not necessarily a bad thing. It may reflect a number of issues like communities becoming or increasing faith in the criminal justice system feeling safe enough to go to a charge office or a community service centre and report of crime, being you know the community developing good working relationships. It may reflect improved documentation and improved reception of cases, improved reporting, improved statistical data collection, improved systems. It may also reflect the manner in which certain offences are recorded. If you look at the Sexual Offences Act now we have 60-some-odd new sexual offences. Those cases might just be recorded differently now. They might be sitting in other sections so when we see a drop in certain types of offences, indecent assault or *crimen injuria* we might see an increase in a different range of sexual offence that involved similar acts and we might just be seeing a shift from a criminological point of view of different types of offences that are taking place within that community. They may be becoming more or less violent in that community, so it is important that we kind of throw caution to using crime statistics as sort of a gauge of police performance because both with underreporting and - I beg your pardon - both with reduced levels of reporting and increased levels of reporting can be impacted by a number / dozens of factors that we have no control of, so again there is sort of an over-emphasis on statistics and this increase / decrease paradigm and I just want to point out in terms of statistics gathering different agencies have different goals for case disposition. You know the police might want to see more cases being referred for prosecution. Prosecution might want to see less cases coming through or *vice versa* so the goals of case disposition might vary. As an example in domestic violence cases police statistics even though they are important to gather in terms of us understanding their nature and the severity and prevalence and where to intervene and how to intervene the statistics sometimes are relevant because complainants don't want to follow through with criminal charges. It is enough that they report it. It is enough that a police member showed up. It is enough that they got an interim protection order so following through the course of justice isn't sometimes necessarily following through with just parts of course of justice are sufficient for that violence to stop and intimidation to stop so again that kind of increase / decreased reporting and police performance doesn't really count, so to speak.

Really what we should be looking at if we are going to be monitoring police performance and looking at indicators are two central criteria and whether that system is delivering on the obligations that are set out in the law, is it happening or not; are they getting a notice or not; have they been told to lay a criminal charge or not; have they assisted with opening up a docket and proceeding with investigation or not and the extent to which victims consider the goals of the intervention whether it is protection from the police or to arrest a perpetrator or to secure support a referral are being made. We should be

looking at much more nuanced indicators of police performance.

It is at this stage whether I am curious as to whether I should run through the recommendations or we should leave that for the?

MS MAYOSI: Perhaps you should be just very brief and summarise the recommendations; the reason being that those are really focused more and will be covered in greater detail in Phase 2 of this Commission's work.

MS ARTZ: Okay, okay. The recommendations around the police are recommendations that we have been articulating to the police probably for about the last ten years. Some of these are very simple procedural things that need to be done. They are very cost effective. They can be done quite swiftly and they are mostly procedural in nature and part of that is just simplifying the process for members on the ground and articulating to them what the basic steps are from reporting to investigation so obviously more training is required with regard to the legal duties of the SAPS. SAPS themselves have said one of the things that they are really concerned about in terms of domestic violence cases is that they don't know how to make those risk assessments; you know, is it really a dangerous situation and what levels of protection should we be offering.

The Firearms Control Act there seems to be sort of very little knowledge about what to do if a firearm is involved. All other interventions related to the Domestic Violence Act if there is a child care issue involved, looking at the children's courts, family courts. It is important that the previous history of domestic violence is document in any statements where criminal charges are withdrawn by a complainant this needs to be recorded and we often find that this is not recorded anywhere or so briefly it will just say: "complainant withdrawn" and we don't have a sense of what the reasoning behind that withdrawal is. We also need much stricter compliance with the standing orders of the closing of dockets. Should a criminal charge be laid the SAPS 508As or copy of it should be put into the docket. That seems like a very simple procedural thing to do so that we have a record of the incidents and referrals. I had mentioned this previously, the SAP508A we have recommended numerous times that very simple changes are made to it. It can be done as a checklist sort of document but what the SAP508A assumes is that the police are the first port of call for reporting and that is the only time if they filled out they are filled out and unfortunately when applicants come with their copies of the protection order to the police station the incident forms aren't completed, so members must be given more detailed instructions about how wide to fill out the reports. There needs to be some clarification on the execution of suspended warrants of arrests. There needs to be clarification of police bringing an application for protection orders on behalf of the complainant. I cannot tell you how many calls I have received regarding, from a concerned member of the SAPS who has wanted to take an application on behalf of an applicant but there was nobody in his or her line management to articulate whether that was a possibility or not; reinforcement of procedures dealing with the complaints of domestic violence committed by SAPS members again including the removal of firearms where members are criminally charged with domestic violence related incidents or where they have breached a protection order against them; again proper documentation in terms of the National Instructions.

Broad recommendations: I don't think it needs to be said that given the levels of domestic violence and sexual offence particularly in Khayelitsha but there has to be some practical strategic priority in terms of the management of

those cases that means adequate training, knowledge, resources, the paperwork is in place; the procedures are in place. Those cases if our national and provincial statistics are anything to go by make up 30% to 40% of the cases that the police are receiving. There should be something slightly more sort of tangible in place to manage those cases more effectively. And again the crime statistics I just want to reiterate that from a national perspective we ought to be encouraging SAPS to at least not necessarily create a separate crime category called "domestic violence" but at least create a mechanism where we clearly you know document domestic violence dockets or you know somehow be able to identify them and count them through the SAPS508A documents. That is it.

MS MAYOSI: Thank you Prof Artz.

NO FURTHER QUESTIONS BY MS MAYOSI

COMMISSIONER: Thank you professor. Mr Arendse, are you going to ask some questions? We had allocated you some time.

CROSS-EXAMINATION BY MR ARENDSE:

Madam Chair I have nothing to contest. I think my questions will be aimed at also trying to assist in trying to deal with what is clearly a huge problem in this area; that unacceptably high levels that is very obviously underreported and we agree completely with the reasons for such underreporting Prof Artz. Just starting with the crime stats not seemingly isolating or indicating this as a separate crime, you know again just to help me wouldn't it be a fairly uncomplicated procedure just to take at least the apart from the underreporting and the reasons you have given that because you know often it is deeply personal ... (intervention)

MS ARTZ: Absolutely.

MR ARENDSE: And people just don't want to go. We have all experienced that in our communities in our families, you know, people tell you, your family tell you and then you say: "Look this is what you must do, go to the police", and they will give reasons why they don't go, so, but at least the 508A and B forms, can that not be collated on a station-by-station, area-by-area, cluster-by-cluster and then provincially and at least that will give a broad indication of the levels of domestic violence in the country?

MS ARTZ: I have no doubt that that is what the intention of SAPS was. I believe they created the incident form knowing that a lot of complainants don't want to lay criminal charges but knowing that they were spending their resources on assisting complainants with more sort of protection and intervention type duties and the incident form does two things. It identifies the nature of - well, three things. It identifies the nature of cases that are coming through. It demonstrates to management the efforts that police are making in terms of assisting that complainant who may not follow through with criminal charges or even get a protection order and it also helps the police resource a little better if they know that 60% of the cases that are coming through are domestic violence incidences only 10% of them where there is a criminal charge in place. We know to redirect services to a certain type of policing function around domestic violence but back to your original statement. I strongly believe that SAPS were well intended with the incident form and I do believe it was meant to assist with us what they used to call sort of the dark shadow figure of domestic violence, that sort of uncountable figure. I just haven't seen the physical mechanisms that they are using that collate that from a - you know - a station level to cluster level to provincial level to a national level. I don't see

that happening. The instructions are very clear about how it should so this is not a matter of poor intention. It is an implementation issue.

MR ARENDSE: Yes.

MS ARTZ: Yes.

MR ARENDSE: I was going to ask, the National Instruction 97 of 1999 are you satisfied that that instruction has kept pace or keeps pace with legislative developments?

MS ARTZ: I do. I think the National Instructions are incredibly comprehensive. In my previous I have worked with SAPS for many years and I think it is a very useful instruction. I do advocate however that SAPS out of those instructions create a very quick 10-point checklist of all of the fundamental actions that police need to take in domestic violence cases. I think that would assist with compliance, you know, that we identify the key things that we need to do to assist the complainant to get shelter, protection, to lay a criminal charge, whatever that might be, but I am satisfied with the contents of the instructions.

MR ARENDSE: Okay is there a policy reason why domestic violence is not regarded as a crime?

MS ARTZ: I don't know. It is something I have been arguing ... (intervention)

MR ARENDSE: I don't want to be too deep about it. I just want to understand why is it only because often I am sure you would agree, more often than not, by the time the complainant or I was told the survivor goes for a protection order, you know the abuse is almost out of control.

MS ARTZ: Yes.

MR ARENDSE: And you know you don't want to think of the worst that could happen. It could end up with a murder docket, so why is that the case? Would that not deter I suppose in the majority, overwhelming majority of cases, men from committing this kind of deed?

MS ARTZ: Can I just speak to the statistical kind of reality of trying to create a crime category called "domestic violence". The Domestic Violence Act is very clear that it composes a number of different types of acts. Some of them are currently codified criminal offences and some are not, but there are a wide range of actions and part of me and this probably goes against the grain of activists who might think we need a crime category called "domestic violence", I think we would be hiding the problem even further because of the multiple range of acts that occur within an instance and over time. That could be better documented as "an assault and then there was an attempted rape and then he intimidated me", and so on and so forth, so I do think they need to be documented in terms of the current crime classifications that we have ... (intervention)

MR ARENDSE: Categories, yes.

MS ARTZ: However that doesn't mean that we can't simultaneously create a mechanism to establish whether there was incidences of attempted rape or rape or GBH were domestic violence related. The Domestic Violence Act is very clear what constitutes a domestic relationship so my curiosity has always been why we cannot create a mechanism to note that and that would be process. I think that would involve a lot of work on behalf of SAPS. It is something to work towards but in the meantime as you said the SAP508As would be a very good reflection of the number and nature of incidences that are coming in at the station.

MR ARENDSE: And then that could be used to correlate against the actual

crimes of assault, assault GBH and so on?

MS ARTZ: Correct, correct.

MR ARENDSE: Again just a question that I don't know the answer to but do the prosecutors have a checklist because you know the decision to withdraw would be that of the prosecutor. It could be investigation is incomplete or it could be that there is a statement missing or something like that but would it assist if the prosecutors also have some kind of a control sheet and do and actually at that point see whether the investigating officer who is now as I understand it a dedicated person to DVAs, to check whether the instruction has properly been complied with?

MS ARTZ: You know I think a lot of prosecutors do that anyway. I think that they have sort of mental checklist of do we have witness statements, is there a J88 in the file etcetera, etcetera. So I think to some extent that is done and I think the instructions to prosecutors connected with the sexual offences act to some degree try to reinforce that but I think anybody, you know, would benefit from something that we could checklist, we could audit and say: "listen, as long as these seven or eight or ten things are done", and that can be social, you know, these children are going to come across social workers and police and medical practitioners and prosecutors and clerks possibly all in one case. You know putting kind of professional protocols in place to ensure that all the boxes are checked, I think could apply to anybody involved in these matters.

MR ARENDSE: Okay. Do you know whether Mosaic attends any of the stakeholder meetings that are held at the Khayelitsha Court? We have heard evidence of that meeting and that it is quite helpful in terms of you know at least identifying issues, problems, and so on and then the parties together address it and if they do attend these meetings do they raise these issues at these ... (intervention)

MS ARTZ: As I said I don't work for Mosaic. I work with Mosaic. I have had a long history with them and in the forums that I am in where there are other sectors involved they do have a presence, but I can't speak to their operational functions.

MR ARENDSE: Okay. Madam Chair just I speak to correction, I don't think the task team was addressed in the statement in Prof Artz's ... (intervention)

COMMISSIONER: It is actually.

MR ARENDSE: Is it, is it to this?

COMMISSIONER: It is, yes. It is about three quarters of the way through the statement.

MR ARENDSE: Okay, okay.

COMMISSIONER: You did deal with the task team in your actual written report.

MS ARTZ: Yes, yes, I did.

MR ARENDSE: Okay. The only thing I want to say about the task team is that that was appointed by the National Commissioner. At least they had identified these problem areas and I mean you took issue with some of the recommendations and so on but it is in the report.

MS ARTZ: Yes.

MR ARENDSE: Madam Chair I just wanted to - I don't want to make an issue of it but I think I asked Dr Lawrence about some of their audit reports, October 2013, November 2013. I am not even sure whether it is part of the DOCS documentation before the Commission and I just wanted to put it to Prof Artz that in October 2013, November 2013 they audited DVA compliance at the three

stations and they put at fairly high percentages, 75%, 82%, 85% respectively. Would that surprise you?

MS ARTZ: You just would have to give me some more context ... (intervention)

MR ARENDSE: Yes I know ... (intervention)

MS ARTZ: It is difficult to sort of just get - that is the thing with statistics and I think I have been trying to warn everybody against that if they don't have a context it is sort of meaningless for me just ... (intervention)

MR ARENDSE: I am hoping Madam Chair that Lisa Vetten would look at that before she testifies because I haven't done an analysis ... (intervention)

COMMISSIONER: At the audit reports?

MR ARENDSE: At those audit reports ... (intervention)

COMMISSIONER: Yes, I am sure we can make them available to her, particularly the section on domestic violence.

MR ARENDSE: And then she can comment.

COMMISSIONER: Yes and they are in the bundles, Mr Arendse.

MR ARENDSE: Thank you.

COMMISSIONER: Ms Bawa?

MS BAWA: Could I maybe pose that question a little ... (intervention)

COMMISSIONER: Could we just check whether Mr Arendse has finished. Are you finished Mr Arendse?

MR ARENDSE: I am just looking to see if there is anything specifically. Oh yes, the statistics from the survey that was done is also quite startling, that 87.3% of the sample you did in Khayelitsha of victims / survivors are not told their rights. My question was just you know any accused in like a purely criminal case, they have got these Section 35 rights and there is a form.

MS ARTZ: Yes.

MR ARENDSE: And the arresting officer would sort of read through the form or just show the form, sign the form. Is there not such a form maybe in domestic violence matters where it again it could assist just to ensure also or is part of the National Instruction as it is?

MS ARTZ: It is part of the regulations of the act and it is Form 1. It is one sheet of paper. It is very simple. It sets out the three sort of broad rights and it should just simply be available.

MR ARENDSE: Just issues of service, I think you've made your point that service doesn't mean personal service, but are there instances where the sheriff is required to effect service? Did you say?

MS ARTZ: Yes, yes, of course yes.

MR ARENDSE: And of course it is quite ridiculous to ask complainants to serve on ... (intervention)

MS ARTZ: You know the service issue depends on the court, the jurisdiction, the clerk, the clerk's relationship with the sheriff, the ability of the complainant to afford service so there are a number of factors surrounding service. My concern largely centres around the fact that when police are ordered to serve a protection order a significant proportion are simply not served, which means that complainants go unprotected for weeks after often very serious incidences of domestic violence. I recognise again the systemic barriers the police themselves - but they are, you know, they have a legal obligation to serve the protection orders so the mechanism does need to be created to ensure that stations at least on a daily level have a vehicle available for service.

MR ARENDSE: Thank you. Thank you, professor. Thank you Madam Chair.

NO FURTHER QUESTIONS BY MR ARENDSE

COMMISSIONER: Thanks Mr Arendse. Ms Bawa.

MS BAWA: I wanted to alert Mr Arendse that there is a statement from Zarina Majiet who is the operations implementation manager at the Mosaic Training Service and Healing Centre for women and that is in Bundle 8, LRC item number 42 and whilst she sets out what Mosaic does in her affidavit she doesn't expressly say that they are part of that monthly meeting, but she is part of the Simelela Thuthuzela initiative and I stand corrected but I think that Ms Harmse in her affidavit mentioned Mosaic as one of the organisations who attend the meetings. Dr Josias mentioned them as one of the organisations that attended the meeting. I am sure that that came out of that evidence. I have one or two questions.

CROSS-EXAMINATION BY MS BAWA:

What can be done from SAPS' side to improve to encourage people or women who don't report to report?

MS ARTZ: I think that is sort of what I was trying to articulate earlier on is that I think it is very difficult for police to get into the role of prevention. I think the most comfortable role that they can play is intervention. A lot of violence prevention work as I said has been happening at the schools level with young people. It is a very difficult thing to try to create a police programme or efforts around for a number of reasons. One, the existing cases are already so overwhelming but I can - I do strongly believe that police can play a profound role in stopping cycles of violence within families and in neighbourhoods and across communities but stopping that incident from happening before it happens I think is a very difficult thing to try to do.

MS BAWA: My next question building onto that is that it seems more and more that the solutions lie in an almost interdepartmental approach. Now to what extent shouldn't our social services be more visible at our policing precincts when women do come in to complain or to lay charges? Would that not be of some assistance?

MS ARTZ: You know I think that projects or initiatives like Thuthuzela are trying to do just that. They recognise that it is a multi sector multi service activity. You have one victim or complainant of a violent crime and there is a whole range of services that need to wrap around that victim. I think that is one model that is attempting to bring lots of people in. I think there are monthly cluster meetings. I think there are a lot of initiatives trying to do that. Again just looking very specifically at social development and the number and nature of cases that they are currently trying to manage, I think it is going to be a slow progress towards having a truly integrated service, you know, for victims of sexual and domestic violence, but I do see a very strong role but I also acknowledge and recognise their total under-capacity to deliver the types of services that I know DSD or social workers would want to be delivering.

MS BAWA: When I had a look at the samples of the 508B registers that we obtained from the three stations the one thing that caught my eye was that we only seem to see where the most part - we only seem to see cases or incidences reported where case dockets are opened where there is a case number allocated and I don't read the national instruction to require that, am I correct?

MS ARTZ: You don't need to open up a docket in order for you to register. In fact the National Instructions are very clear. You report, if there is a reported case of domestic violence it must be recorded with or without a criminal charge

being laid or a docket being opened.

MS BAWA: So what we are seeing is an even greater underreporting because I can't envisage that every complainant who comes into a police station will necessarily have a case docket opened, am I wrong about that?

MS ARTZ: No they wouldn't. It depends on the circumstances of the case. It depends if the complainant wants to lay a criminal charge. It depends on often the discretion of the police if they believe it is a viable offence to open up a docket and to effect arrest and to investigate. There is a lot of discretion that takes place and I see it particularly with sexual offences and domestic violence. I see a lot of discretion regarding you know the extent to which the complainant provoked it or was in the wrong place at the wrong time or she had been drinking or there are a lot of factors, social factors that start to play and those you know, leave those judgements for judges is what I always tell the police you know, open up the docket whether you believe the complainant or not, whether you believe it is a false report or not. Your job is to professionally take a statement, register the case and let another - the next layer, the investigation layer decide whether you know it is going to proceed, but that frontline thing there should be very little discussion about whether to open up a file or a docket when a complaint comes particularly in sexual offence and domestic violence cases.

MS BAWA: I know you may not have had access to the samples of occurrence books we looked at but is it expected that they record it both in the domestic violence register and in the occurrence books because we don't see that correlation.

MS ARTZ: That has always been a very tricky thing. That is I think where we have to uncomplicate the National Instructions just a little bit because the National Instructions require the pocket book, the occurrence register as well as the form and I think that is quite a lot to fill out because after the form you fill out the register so that is sort of four places in which these incidences are to be recorded and again I would recommend to SAPS that that instruction is made a little bit more clear and it is a little bit more linear in terms of the recording practices than it currently is.

MS BAWA: Okay, and the one thing I have also noticed from that which we looked at is domestic violence incidences which involve SAPS members in Khayelitsha. Do you have any specific information in relation thereto?

MS ARTZ: We had a couple of cases during the course of the initial research, the 365 cases and those cases are always hugely problematic. They are complainants and respondents who are accused from the same community. There are a whole range of complexities around the removal of firearms. We have had complainants say to us "but we don't want to, even though he threatened me with the firearm we don't want the firearm to be removed because I feel safe in our home when he's got the firearm even though he has used it against me previously", so there is a whole lot of kind of complex social factors that come into play. What I do believe is that these cases need to be attended to swiftly through the proper disciplinary channels, well documented, well recorded and that efforts need to be made to ensure that you know new duties are set for that member of the police or those charges are laid or that disciplinary action is laid and it is documented. I believe from what I have seen from the ICD reports they have also struggled to see sort of comprehensive reports on what does happen when there has been a disciplinary action against

a member in terms of the Domestic Violence Act.

MS BAWA: You referred to ICD reports. These are pursuant to the Section 18 requirements of the Domestic Violence Act. Is that how I understand it?

MS ARTZ: Uh-huh, correct.

MS BAWA: We heard evidence I think it was earlier in the week from the provincial, the acting head of the provincial IPID and in his affidavit before this Commission he had indicated that firstly they were not in possession of any complaints or documentation emanating from Khayelitsha vis-à-vis non-reporting of the domestic violence and he says so in terms in his affidavit and in the documentation he had provided to the Commission there had also been no applications made as contemplated in Section 18 for exemptions. He indicated in his oral evidence to be fair, that he would go back and confirm that there had been no applications for exemptions to do that. The interesting part about his evidence was he placed the obligation to report non-compliance of Domestic Violence Act onto SAPS and said that there was no obligation on the ICD to go and do any form of proactive investigation as to whether SAPS was in fact complying. Now ICD has come and gone and we now have IPID and that obligation has now shifted from IPID to the National Civilian Secretariat. Do you have any knowledge as to how the National Civilian Secretariat is dealing with that aspect?

MS ARTZ: I don't. I think that sort of transfer of authority in dealing with these cases has not been as clear as we would have liked it to have been from a couple - from ICD to IPID to the secretariat and I myself I am still waiting to see how those cases are going to manage and under what authority and what mechanisms that they are going to use to investigate these matters or to monitor what is happening in terms of compliance of the act so it is not something I can really answer. I am hoping that they ... (intervention)

MS BAWA: But that authority has been transferred more than ... (intervention)

MS ARTZ: Two years ago.

MS BAWA: Two years ago?

MS ARTZ: Yes.

MS BAWA: Almost two years ago.

MS ARTZ: Yes.

MS BAWA: And nothing has yet ... (intervention)

MS ARTZ: Not that I am aware of and nothing that I could speak with authority about here, although I am happy to follow up on.

MS BAWA: My other question is, you know there are structures, community structures called community policing forums and it is created under the SAPS act and it has got have representatives of organisations within the community and the act contemplates that that is the community's voice to liaise with SAPS and to transfer complaints within the community or indications of crime within SAPS and that that is the body that would inform SAPS of the indications of what kinds of crime happen in the community. Now I have had a look at quite an extensive or to the extent that there are minutes of this body in their interaction with the meetings with SAPS, there is not one mentioned of domestic violence. Do you care to comment on how effective such a structure is in the realm of domestic violence?

MS ARTZ: You know when I hear stories like that I am always disappointed that we are facing a bit of a national crisis when it comes to violence against women and it should be something that is prioritised in every state structure, whether it

is education or oversight authorities or policing or what have you, but that really would just be my only comment is that I am disappointed to hear that.

MS BAWA: Mr Arendse raised with you domestic violence reports that had been compiled by the Department of Community Safety and it happens in the following way. They do - they are in charge of oversight and monitoring. They go into the police stations. They go and inspect a range of police stations with every visit and then they do a report on that inspection. The evidence from the department has been that we are not allowed to do unannounced visits to the police station so the stations know that we are coming to do these inspections and that is going to include domestic violence registers. Do you think that would impact on the percentages or the reporting that the department reports on?

MS ARTZ: I have had similar experiences where I had to be announced before I came and I am quite sure that some of those forms were filled out the night before I arrived so, you know, I do think that there is a good reason to have unannounced inspections. That station should be operating at full capacity all of the time, not just when there is a visitor so my expectation would be that all of those things are in place.

MS BAWA: I am not sure if you were here for any of the witnesses this morning.

MS ARTZ: I am afraid not, no.

MS BAWA: But I understand that one of the witnesses testified that the Khayelitsha police had refused to register a case, but instead told the complainant to go to her in-laws and resolve the domestic violence there. Now we live in communities where culture is an important element. How does that play off in a community like Khayelitsha when it comes to matters of domestic violence?

MS ARTZ: I wish I had four hours to go through all of the studies that we have done on (indistinct - laughing) but I was asked to focus on one very small aspect of our attrition work. We have picked up this tension between informal and formal justice mechanisms and recognised the value in informal justice structures but when a complainant his or herself comes to a formal system to seek assistance that formal system must render that assistance and that is sort of where I draw the line. If it is not for the police who are in a formal state system to advise a community member to go resolve that issue in the community. That community has those mechanisms available, those informal justice sectors. There are those kinship structures, whatever they might be. If they opt to do that in addition to a formal response - that is great, but when you've come to a formal system for an intervention, protection or assistance that system needs to respond in its formality.

COMMISSIONER: Prof Artz is that approach written up anywhere? Have you done any work where it is published?

MS ARTZ: I have a colleague who did some work on informal justice and many, many years ago I did some work with rural women and domestic violence. The issues haven't really changed and in fact since there has been massive sort of migration from more rural provinces into the Western Cape it is becoming even more profound of a problem and we recognise that often the authorities that receive these complaints are also part of that community and those structures and those community structures and value in formal justice but we feel very strongly that it - you know formal systems have been set up to provide that formal service. That doesn't preclude you know a conversation with the

complainant to say: "You know you can also explore your community court, you can also do this, you can also do that, but I am going to render you the service that you came here for..." We may be able to provide something useful so ... (intervention)

COMMISSIONER: Yes, it will be helpful if you do have some research. I mean this seems it is the hallmark of a rule of law system that it is complainant driven ... (intervention)

MS ARTZ: Yes.

COMMISSIONER: And that it shouldn't say there may be other ways of dealing with it ... (intervention)

MS ARTZ: Correct.

COMMISSIONER: Because at the end of the day that is the rule of law system. The fact that there may be other systems in operation which might have different hallmarks is neither here nor there ... (intervention)

MS ARTZ: Yes.

COMMISSIONER: But I mean it is not unlike in some ways it sounds somewhat shocking to say, but the evidence you were giving about domestic violence is not unlike the endeavour about vigilante violence which we have heard, firstly it is not defined as such by the police, you know they see vigilante violence as either murder or assault, the same with domestic violence, it is either murder or assault and yet if one think that for kind of policing decisions not actually knowing the scale and scope and location of these kinds of, it makes it very difficult to make good policing decisions.

MS ARTZ: Correct.

COMMISSIONER: So it will be helpful to be referred to any research you've got on informal versus formal.

MS ARTZ: I will speak to.

MS BAWA: I have one final question. It didn't really cross my mind. I had the statistics of the gender break-up at the three police stations and I don't have it on hand now, but maybe on a more general point. Does the gender of the police officer who takes the complaint make a difference?

MS ARTZ: That is always a question that I have been very reluctant to respond to because the feminist in me says yes. They should, you know, we should see higher numbers of women working on the ground within communities within, playing particular roles within the police. I have yet to derive any evidence from my research that says that female members of police make better police officers in certain types of cases than men do. With that said what I have seen are female members of the police that are much more dedicated to the issues. Their fear career-wise is that they are going to end up in the nappy squad, so to speak, you know, and any time we do interviews with police around sexual offences or domestic violence one out of five times they will say: "Oh I don't deal with those cases; we give it to the lady who is on shift." So there are two sides to that question. Are they better? I can't answer that empirically. Are they more committed to the issues and are more likely to be managing cases because of their gender? Absolutely! I would like to see more women in the South African Police Service but I would also like to see more women in the South African Police Service taking on positions that they want to take on and not to be employed simply to do the kind of social fabric crime stuff.

COMMISSIONER: One has to be careful not to essentialise; it is really tricky.

MS ARTZ: Yes, absolutely.

MS BAWA: Sorry I know you can - having said that to you, they do have a specialised Family and Child Protection Unit. What if I rephrase the question and say that we put domestic violence squarely into that unit and that somebody from that unit be it male or female be at the station to deal not only with the more serious matters but with the domestic violence complaints that come into it as well?

MS ARTZ: The issue of specialised units is very complicated and it is complicated by the fact that even looking at our national figures which we all are slightly sceptical, but required, show that half of the cases that come through our police stations involve women and children so effectively you are asking our police system to split in two; one that deals with crimes against men and then one that deals with crimes against women and children. I think that there are very - I think that the FCS's are doing a very important job with very specialised cases and in particular with child sexual abuse are unbelievably complex particularly where the child is in a family care setting. The investigations are long and protracted. There are talented, talented people doing a very special job. I am slightly reluctant to - based on our statistics to split our police service in half and I would like to know that if I have been sexually violated or had sexual assault committed against me and I go to my local police station that anybody there will know what to do to assist me. They will know how to take my statement. They will know how to make a referral. They will know who to phone. They will know you know where I get my medical legal examination done. They will drive me there - anybody. So I think to create super specialisations for a problem that is as epidemic as violence against women as in this country, I think would be counterintuitive.

MS BAWA: Thank you very much.

NO FURTHER QUESTIONS BY MS BAWA

MR PIKOLI: Thank you Prof Artz. It is often argued that the police have a difficulty if not an impossible task to play any role in the prevention of domestic violence except perhaps where they themselves are perpetrators. There is a counterargument that might run along the lines of saying if the police were to step up their ante in the implementation of Sections 2 and 3, that could serve as a deterrent and that on its own can be a contribution in the prevention of domestic violence, what would be your take on that?

MS ARTZ: That is an old criminological question of deterrence, sort of swift and accessible justice and all of that. I feel the deterrent effect needs to come both from police interventions where communities know that when you commit this particular action you will be arrested. A charge will be laid; a protection order will be issued against you. The other part of that deterrent effect needs to come from our communities themselves around no tolerance around violence against women and children but I think the police can take the lead around that. You know there is an old, you know, basic criminological theory sort of dictates that you do what you can get away with. If you find a R 100.00 bill sitting in the middle of the floor; nobody is in the room; you pick it up, you look around; you put it in your pocket. If you find a R 100.00; there is 40 people sitting in the room you are going to ask if anybody dropped it. You know it is human nature to push those boundaries, but if we have a social control like a police force or a police service - I beg your pardon - that acts swiftly and takes seriously cases, I do think it is going to have a deterrent effect. Similarly when the Domestic Violence Act came out everybody thought this was going to be a nightmare and

people wouldn't understand and it was too complicated. Within two to three years most women in the communities we worked with knew exactly how this thing functioned, which clerk we should go to, which court works better, which police member is the most helpful. Communities educate themselves around these things so I feel quite strongly that if we had a service, a policing structure that had a no tolerance approach to these things and just did their job; I am not saying go outside of the bounds of what they had been instructed to do. Do what the instruction say, pages 1 to 40 or whatever it is, or your 10-point checklist. As long as there was continuity in that service and some victims weren't meant to complain and some were meant to be treated as though they weren't important enough to not be believed or whatever, as long as that service was continuous and swift I think it would have some impact.

MR PIKOLI: Now this area of domestic violence has been seen as a (indistinct) area by Government. Now what would be your expectations in terms of how this actually manifests itself on the ground and are your expectations met given the fact that you always have the "16-days of Activism" year in and year out, but yet the results don't really reflect that?

MS ARTZ: No. My first answer is I would like police to be police first. Social crime prevention is important. Community education is important, but I would like police to be police first and foremost and I have been making the case to SAPS for many years. We just need to get back to basics. A complainant comes in. She says X-Y-Z. There are a few grey areas. Somebody has been drinking or it wasn't certain whether it was this person or that person. Let's work with a few grey cases and let's learn how to, really learn how to take a statement that covers the elements of all of those offences, because I can tell you that if we went into a police station now and a sexual offence was committed; a number of sexual offences were committed, I can guarantee you that that statement would not ask questions about the various elements of that offence, "did he penetrate you", you know, as an example, so for me it is getting back to basics. How do we write a good statement, because as soon as that reporting officer is finished with that statement he or she should be able to hand that statement over confidently to the investigating officer for them to do their thing so you know the answer is as simple as let's get back to good policing; simple administrative responsible policing and not fancy days of activism, which is not what police are employed to do.

COMMISSIONER: Any re-examination?

MS MAYOSI: I have no questions Madam Chair.

NO RE-EXAMINATION BY MS MAYOSI

COMMISSIONER: Yes Mr Arendse?

FURTHER CROSS-EXAMINATION BY MR ARENDSE:

Just one question on the disciplining that arises from the Tshabalala report, I forget the number now, but there is an indication that I think it is under 300 but quite a number of police officers were disciplined for transgressions relating to DVAs. Do we have any idea of what the sanction was because I think we would be concerned that the same transgressors if they were found guilty were sort of put back in charge of 508As and Bs or is there any ... (intervention)

COMMISSIONER: ... response you'd like to give?

MR ARENDSE: Oh okay.

MS BAWA: Mr Arendse, we were provided with limited DV disciplinary registers.

It is part of what has been disclosed although redacted. The complaint comes in. It gets referred from the PC down to the station commander to get dealt with. In some instances it gets referred onto another police officer and the column gets filled in. This has been dealt with in terms of the police disciplinary register alternatively the complainant is satisfied that the matter has been dealt with properly, even the own disciplinary registers with which the Commission has been provided does not ... (intervention)

MR ARENDSE: My question to the witness was as someone who has done a lot of research and esteemed in these matters. What would your recommendation be where police officers have transgressed; they have been found to have transgressed. Surely they should not be put back in charge or back in that particular, doing that particular job?

MS ARTZ: There are so many ways to answer that question. I mean the first is that we have to look at the degree of non-compliance or transgression. Not filling out a form or a register is not the same as pointing a firearm at your partner or your wife and I think we need to look at the scale of. This is why I get so frustrated with police statistics and the way we write out numbers down. Yes, there might have been 205 cases or disciplinary actions. We don't know if you know 50 people had disciplinary actions against them with an average of four charges, you know, we need to take a look at the nature of those transgressions, the severity of them and then we can start talking about well what do we do now. If we have statistics here that say well, a lot of these disciplinary actions have been about small procedural aspects of the Act, not you know following through with a suspended warrant of arrest or a lost form or whatever, right, that is a training issue. Then we need to recalibrate, you know, how we are managing these cases, but there are serious incidences. I would imagine the ones that I have come across with not arresting somebody who has just threatened to kill somebody else to me is a massive dereliction of duty or saying you need a warrant to arrest when you don't need one in terms of the Act or committing an act yourself, so I think we just need to be very careful about our numbers.

COMMISSIONER: Thanks Mr Arendse. I think this is an absolutely crucial issue. It comes out of General Tshabalala's report because what you would want, I mean any good labour lawyer would say we want progressive discipline that improves the quality of the work that is performed rather than vindictive discipline and yes, criminal action is criminal action. That obviously has to be dealt with, but very often one's attitude to people who have made a mistake in the way they do their work is to actually make sure they don't do it again.

MS ARTZ: Correct.

COMMISSIONER: Anyway this I am sure is something we will spend a lot of time talking to various of your clients about over the next two weeks.

NO FURTHER QUESTIONS BY MR ARENDSE

COMMISSIONER: Thank you very much indeed Prof Artz. It has been most helpful, a very thorough and informative report and we would be very grateful to any further information on informal and formal and we may still be talking to you at the second phase of the proceedings.

MS ARTZ: Okay.

COMMISSIONER: But you may now stand down.

MS ARTZ: Thank you.

WITNESS EXCUSED

COMMISSIONER: Is there anything else that we need to deal with before we adjourn? We just need to say that I think - we thought we would start at 09:30 on Monday morning. We will be issuing timeframes for questions by later today but we would start at 09:30 on Monday morning if that is convenient to everybody. Mr Arendse?

MR ARENDSE: Yes, I was looking at my diary because today I saw online somewhere that we have the small matter of a general election on the 7th of May.

COMMISSIONER: I see, an inappropriate ... (intervention)

MR ARENDSE: And I had a line through my diary on that day. I can't remember what it was for.

COMMISSIONER: No that is correct. That was the day for closing arguments and so I have been reliably informed by one of the evidence leaders that we are having the general election on that date. One of the possibilities would be to move it a week to either Tuesday the 13th or Wednesday the 14th of May. I don't know if people would like to look at their diaries and see. Unfortunately I can't do the 8th. We could also do it on Friday the 9th but perhaps there can be a discussion. I think Advocate Pikoli you and I are reasonably free in that, in those two weeks, other than on the 8th, so I mean we definitely would want to move it past the 15th of May so if perhaps amongst yourselves you could find a mutually suitable day and week, we will then put that into a notice. Good, thanks very much, everybody and see you Monday morning 09:30. We now adjourn.

COMMISSION ADJOURNS: (at 16:00)

COMMISSION POSTPONED TO 10.02.2014 (at 09:30)