

In re:

SOUTH AFRICAN POLICE SERVICES: MBIZANA DISTRICT

COMMUNITY PERCEPTIONS OF PARTIAL CONDUCT

STATEMENT BY NONHLE MBUTHUMA

1. I am a member of the community of Umgungundlovu. The community defines itself as such and members share the same social values, similar economic interests and aspirations. We are governed by our own customary law.
2. The community resides in the area between the Mtentu and Mtamvuna rivers and make a living from the land and its resources including farming and grazing. There are five closer settlements or villages in this area generally known as the Xolobeni area, after the name of Xolobeni village.
3. The community is organised. The community adheres to its own laws and recognises the headwoman of Umgungundlovu, Ms Cynthia Baleni and her council and advisors as the legitimate leadership of the community. The Amadiba Crisis Committee [the ACC] works with the headwoman and her council and represents the community in certain matters. The government categorises the Umgungundlovu community as part of the Amadiba tribal authority or traditional council under chief Lunga, but the Umgungundlovu community rejects the leadership of chief Lunga insofar as chief Lunga supports the establishment of the titanium mine on the community land of the Umgungundlovu people.
4. This statement is about community perceptions of bias and partiality by the South African Police Service in its dealings and relationship with our community. Members of our community are concerned that the SAPD is not impartial and independent in its conduct concerning our community.
5. I am a leader in our community. I am on the executive committee of the ACC, and I have often represented, with others, our community in dealings with the authorities. Members of our community contact me about concerns and I regularly attend community meetings. I regularly speak to our headwoman Cynthia Baleni and members of her council. I attend the weekly komkhulu meetings on Thursdays as a matter of course. I make notes and keep a record of important community events. I also act as deputy secretary for the Headwoman's council when so designated by the council.
6. I make this statement on the basis of what I witnessed, on what was discussed in community meetings and on verbal and other reports that I received including reports from eye witnesses. I was not present at all the events but I have verified the facts to the extent possible.
7. I shall describe below examples of events and conduct that are regarded by our community and its meetings as illustrating that the SAPD is not impartial and objective in its dealings and relationship with our community. These include:

- a. Raids and selective house to house searches during the past two weeks. This started happening less than a week after protracted bail hearings involving Mr Xolile Dimane and others;
 - b. Initial reluctance of the SAPD to arrest and prosecute Mr Xolile Dimane and his co accused after the attack on community members on 29 December 2015;
 - c. Reluctance on the part of the SAPD to investigate the threats on the life of our headwoman Ms Baleni which assaults started on 19 December 2015
 - d. Lack of progress in the investigation and prosecution of the assault on Ms Ndovela on 3 May 2015.
8. Members of our community fear that their lives are in danger. I believe that they have reason to do so, based on the events of the last few months. Some members also believe that they cannot rely on the SAPD to protect them against attacks by thugs who sometimes come from outside the community. It is because of the concerns and fears expressed that leaders of the community have asked me to make this statement so that the authorities can be alerted of the concerns and take steps to ensure the safety and security of our community.

Background: the application to mine the Xolobeni area

9. Our community has engaged with the authorities and the mining company TEM over the past ten years concerning the applications and proposals to mine for titanium minerals on our land. The community opposes the establishment of a mine that will mean the removal of our people from our land and the destruction of the community and the livelihoods of its member households.
10. The community has always used peaceful and legitimate means to express itself on the issue of mining. We used every opportunity to make submissions to the authorities about our concerns and the potentially negative impacts of mining. We also, successfully, appealed the decision of the regional manager of the Department of Mineral Resources that first allowed mining to proceed.

The South African mining company TEM, a SA partner of the Australian mining company MRC, is supported by a local empowerment company Xolco started by Mr Zamilé David Qunya in 2003 and still championed by him. Mr Zamilé Qunya remains a director of another MRC subsidiary or BEE partner Blue Bantry and of MRC's partner MSR that runs the Tormin Mine in Western Cape. TEM, in March 2015 lodged a fresh application to mine the whole of the Umgungundlovu area, including the Xolobeni village area, between the Mtentu and Mzamba rivers. The community requested copies of the application from the department and TEM but were refused copies. The community filed legal proceedings out of the North Gauteng High Court [case number 96628/15] demanding a copy of the application so that the community could properly consider and if necessary challenge the TEM/Xolco application legally. These legal proceedings are still pending. Once a copy of the application has been obtained, the community has 30 days to lodge a formal objection to the application.

11. I shall start with my compilation and understanding of events in May last year and then summarise the events of December last year. These are based on reports made to me by reliable witnesses. I have not necessarily checked with my informants and the witnesses that

I can use their names in my statement. Because I know that some of them fear for their lives and are concerned that publication of their names may prejudice them, I do not always state the names of my sources where I myself did not attend.

Events of 03 May 2015

12. On the evening of 03 May 2015, a meeting of mining supporters was held at the Xolobeni pre-school. After this meeting, mining supporters accompanied Captain Ntlangula, the Station Commander of Mpisi Police Station, to the homes of mining opponents.
13. After these visits, several mining supporters discharged weapons in Mtentu and Xolobeni. It should be noted that some of these mining supporters, including Zamile Qunya and Nthethelo Madikizela, have admitted that they brandished and even discharged firearms on this night. While they aver that they hold licenses for the firearms, they have not produced these licenses.
14. On returning to Xolobeni from Mtentu, these mining supporters attacked a group of mining opponents. During this attack, Mr Zamokwakhe 'Bashen' Qunya viciously assaulted one Msaidilose Ndovela, a 61-year-old pensioner, causing her severe injuries.
15. Charges were laid by, inter alia, Ms Ndovela in relation to the events of 03 May 2015. A case was opened at Mpisi station under the case number 06/05/2015. A J88 documenting Ms Ndovela's injuries was submitted under this case number.
16. Despite the severity of the assault, the numerous witnesses, and the J88, it appears no arrests were ever made in relation to these charges. As far as I am aware there were no searches conducted of the homes of the accused despite them admitting to discharging weapons. I am unaware whether the matter is still being investigated. The complainant Ms Ndovela and her family have not received reports about the progress in this matter. There is widespread concern that this matter is not being brought to finalisation. There is clear evidence of the crime and the perpetrator or perpetrators.
17. It should be noted that a High Court interdict against further violence was obtained against Zamile and Bashen Qunya and other accused in case number 06/05/2015. The interdict issued by agreement on 28 May 2015 under case number 2244/2015 out of the Eastern Cape Division High Court Grahamstown, listed six respondents including Zamile and Bashen Qunya, Lunga Baleni, Sizwe Shezi, Ntethleko Madikizela and the station commander of the Mpisi Police Station.

Events of the 19th and 20th of December 2015- Attack on the Headwoman of Umgungundlovu

18. Sometime during the day on Friday 18 December 2015 a small unidentified vehicle drove into Mdatya village. The vehicle came to a stop about one kilometre from the homestead of the Headwoman of Umgungundlovu, Ms Cynthia Baleni. An unidentified man was seen disembarking from the vehicle and proceeding to take out a pair of binoculars which he used to observe the Headwoman's homestead. The man then approached a young boy from the area and asked him to point out the homestead of the Headwoman of Umgungundlovu, which he did.
19. Shortly afterwards, the man was seen walking around the area before he entered his car and drove away. He did not go to the Headwoman's homestead.
20. When the headwoman arrived at her homestead in the evening, the young boy told her a man was looking for her but had left the area without going to her homestead.

21. In the night of Saturday 20 December around 24h00 the Headwoman went outside intending to relieve herself. As she walked towards the toilet she saw the headlights of a car approaching. The car was headed in the direction of her homestead and came to a stop about two kilometres from her homestead. The headlights were then switched off.
22. The Headwoman became suspicious as she recalled the report she had received from the young boy during the evening. She immediately ran to her house and woke her children before fleeing into the bush surrounding her home. They hid there and she instructed her children not to make any noise. They left all the doors to the houses in her homestead open.
23. Shortly after they hid in the bush, a group of unidentified men approached her homestead. There were more than three men although she could not identify the exact number nor who they were. The men knocked on her door and asked if anybody was home but there was no answer. They then split apart and began conducting what seemed like a search, entering all the houses in her homestead. After they failed to find anyone, they all gathered outside.
24. She then heard two gunshots in quick succession coming from the group of men following which there was a long pause. Afterwards the men left and returned to their car before driving off. The Headwoman and her family did not immediately return to the homestead, they continued hiding until sunrise.
25. In the morning she phoned members of her traditional council and informed them of what happened. The word spread around her community and they gathered at her homestead later that morning.
26. In the next night between Saturday 19 December and Sunday 20 December, men again came to her homestead. There were new shots fired. The Headwoman was again in hiding in the bush together with her three children.
27. On Sunday 20 December, youth leaders in Mdatya organised a meeting for the youth. I and Mr Mzamo Dlamini were at this time driving from Sigidi to R61. At about 5 p.m. we met two police vans from the Mzamba police station. They stopped us and inquired about the meeting in Mdatya where they were heading. We responded that we did not know anything about this. To our surprise, two other men came in two separate cars together with the police. It was Mr Zamokwakhe 'Bashen' Qunya and Mr Ntethelo Madizikela. Both of them were on the list of six men interdicted in May 2015 by the court in Grahamstown. As for Mr Bashen Qunya, a case was opened against him at the Mpisi police for assaulting Ms Ndlovela during the 3 May incident in Xolobeni, which case we since then have heard no news about. Mr Qunya and Mr Madizikela were now, in my view, helping the police.
28. On Monday commenced a meeting for the whole Mdatya village at which a decision was taken to make enquiries from the Headwoman's closest neighbour, Mr Mthandeni Dlamini to the meeting. It had been noticed that he was absent despite his wife being present. This raised the suspicion of the community members who felt strongly that he should be present to give his account as a neighbour because he could possibly have witnessed the previous night's incident.
29. When Mr Mthandeni Dlamini came he was interrogated by the community about his knowledge about the attack on the Headwoman. To this he denied knowledge or involvement although he confessed to have been involved in the earlier attack that took place on 3 May 2015 in which Ms Msaidilose Ndovela (61) suffered a stab wound to the arm. Mr Mthandeni Dlamini also implicated certain other persons in that May attack.
30. Members of the Council of the headwoman then telephoned Mzamba Police Station to report the previous night's incident and they also requested the police to come to the meeting and

obtain this statement or confession from Mr Mthandeni Dlamini. When the Police arrived they interviewed Mr Mthandeni Dlamini. Afterwards they refused to open a case regarding the previous two nights' incidents at the Headwoman's homestead. They stated that there was insufficient evidence on which to base the claims that the Headwoman had been attacked during the night. However, they offered to patrol the area and monitor the situation.

31. I pause to say that the community remains very concerned about the safety and security of our Headwoman. From what appears above and subsequent events we believe that then only way in which threats to her life can be dealt with is to investigate the assaults and/or threats of assault and to prosecute the guilty parties. This is the first instance or example which I wish to bring to the attention of the authorities that give rise to the perception that the SAPS is ambivalent about investigating and following up on the concerns and complaints of the members of our community.
32. On Monday 28 December, a further meeting was held in Mdatya to which also Amadiba chief Lunga Baleni was invited, but to which meeting he did not come. Chief Lunga was invited both in his capacity as chief – it would be natural for him to intervene in this situation – and not least because he since the end of November had demanded the official stamp of the TA from our Headwoman who was now under attack. He was questioning her authority but he was not following the requirements of the customary law applicable to him and our community to resolve the apparent dispute. Instead he demanded the stamp. The community wanted him to explain that he had nothing to do with what was happening to our Headwoman and the attacks on her person and household, even if he since January 2015 has become a director of Xolco. He was also expected to explain what steps he was taking to protect our Headwoman.
33. At this meeting, both Mr Mthandeni and one of the Bethi brothers were requested to attend. Mr Bethi had come under suspicion during the week. He was also arrested by the Mzamba police in the morning of 31 December together with his brother. The youth became unruly during the proceedings, and leaders of the crisis committee (ACC) took the two into the Headwoman's house to calm down the situation. The chair of ACC finally decided to take the two into safety in his car and drive from the meeting when it was about to end.
34. I went into some detail about the conduct of the SAPD of the Mzamba police station that failed to take steps to investigate the shootings, gunshots and other assaults or attempts of assault on our headwoman. Many members believe that there is enough evidence to warrant a proper investigation so that everyone will know that assault, threats and intimidation will not be tolerated by the authorities and the SAPD.

The events of 29 and 30 December 2015: Ambush of community members and firing of gunshots around community.

35. The next day, on Tuesday 29 December 2015 around 13h00 in Mdatya village, a further meeting was again held at the Headwoman's homestead as part of a series of meetings to discuss ways of preventing further attacks from taking place in the village. Around 16h30, police from Mzamba arrived at the meeting. They stated that they received an anonymous tip off from a community member that there was fighting in Mdatya village. They did not reveal the community member who made the report. Once they observed that there was no fighting or any clashes the police left the meeting and the village.

36. At 18h30 the meeting came to an end and people began dispersing to go home. A group of community members began walking home together from the Headwoman's homestead. At around the same time another group of community members were also walking home from a traditional ceremony that had been held in the vicinity. Amongst them were Mr Mthandelwa Ndovela and his brother Mr Zolile Ndovela. The two men were carrying traditional Xhosa fighting sticks that they had used in a demonstration during the ceremony. The two groups' paths converged near a store belonging to the late Mr Scorpion Dimane's family. The groups stopped after observing another third group of armed men seated opposite the shop. The armed men stood up and approached the community members who were standing in close proximity.
37. The men from opposite the shop were armed with knobkerries and bush knives. Some of the men in the group were identified as not residents of Mdatya village but surrounding villages and at least one of them employed at Tormin in Western Cape. Tormin is the mine operated by the sister company of TEM/Xolco called MSR, also a partner of the Australian MRC. As they approached the community members coming from the headwoman's house and the traditional ceremony, one of the men in the armed group asked them what they were doing at the headwoman's homestead. At that point a man identified as Mr Thembile Ndovela, ward council member for Mdatya Village, threw a knobkerrie towards the community members. It did not hit anyone as people dodged out of its way.
38. A man identified as Mr Phondo Ngoko (tenant occupying the shop of late Scorpion Dimane's family) came out of the shop and tried to intervene to stop the situation from escalating further. At that same moment, a man known in the community as Mr Mto Bhele pulled out a firearm and pointed it straight at the community members. As some of the people fled, Mthandelwa Ndovela, Thokozani Dlamini, Zolile Ndovela, Boy Boy Dimane and Diba Mathumbu remained standing. Mthandelwa raised the two sticks he was holding, intending to defend himself.

Victim 1 - Mthandelwa Ndovela

39. Another man, Mr Xolile Dimane, from the armed group immediately rushed towards Mthandelwa and hacked him on the head with a bush knife causing a deep gash to his head. Mthandelwa collapsed on the ground. A man identified as Mr Mdlele Bhele then stabbed him with a spear-like object. More men from the group began assaulting Mthandelwa with knobkerries whilst he was lying on the ground.
40. He was treated at the Gamalakhe hospital on the 30th of December. That he also had a fracture in his right arm was not discovered then. He later went to the hospital in Bizana to also get a cast for the arm.

Victim 2- Zolile Ndovela

41. Whilst Mthandelwa was being assaulted on the ground, some of the men turned on his brother Zolile. He was struck with a bush knife above his brow on his face and also suffered multiple injuries from being beaten by a knobkerrie. He couldn't be convinced to go to hospital that night. He went the next day to Mzamba police and laid charges.

Victim 3- Thokozani Dlamini

42. Thokozani tried to rescue Mthandelwa from the assault but Mdlele Bhele threatened him with a knobkerrie. Mto Bhele then pointed his firearm at him and threatened to shoot him. Thokozani, fearing for his life, started to run. His foot slipped on a rock and he fell to the ground severely fracturing his leg, just above the ankle. He then crawled away to a safe distance and phoned his sister, who stayed nearby, for assistance. He was admitted Monday 18 January for an operation at Port Shepstone hospital.

Victim 4 & Victim 5 – Boy Boy Dimane and Diba Mathumbu

Mthandelwa Ndovela who was still being assaulted on the ground when one of the men attacking him shouted "Lets finish him and kill him". At that point an unidentified man jumped in front of the attackers and tried to restrain them. Boy Boy and Diba then managed to intervene and drag Mthandelwa from the attackers. They had also been beaten by knobkerries but saw an opportunity to save Mthandelwa's life. Once at a safe distance they lifted him up and carried him to a cave nearby where they hid, fearing another attack. The armed men fled the scene as other members of the community began to gather, after word had travelled about what happened. Some of the community members took the victims of the attacks to Ntabeni Clinic for treatment. The time was around 20h00. They arrived at the clinic at about between 22h30 and 23h00. I was there. After receiving some treatment at the clinic, Mthandelwa and Thokozani were referred to Gamalakhe Community Health Care Centre, near Margate, for further treatment.

Gunshots and automatic gunfire in Mdatya Village

43. Around midnight on the same day and continuing into the night until 02.00 a.m., gunshots were fired near or at the homes of Mr Luthiwe Dimane, Mr Zandla Dlamini, Ms Nomelwani Mhlayingani (secretary of the Headwoman and member of the ATA), Mr Sikeshe Keshe Dimane, and Mr Skebhe Dlamini. Doors were kicked in and houses were searched whilst the families were hiding in mielie fields and the forest with their children. The gunmen were not identified. The victims of the intimidation are regarded as community leaders and are opposed to mining.
44. At Mr Zandla Dlamini's house, beer and whisky bought for a Rite of Passage ceremony were stolen during the assault. Already on Monday 28 December, some of the men now suspected for the attack were boasting to community members that they would destroy the ceremony of Zandla Dlamini's family, scheduled for 31 December, because Mr Dlamini is "anti-mining". He was called by a person in the afternoon of 29 December who warned him that men were coming after him so he was hiding in the field watching them. Mr Z Dlamini reported to the community meeting on 22 January that the armed men fired off a long salvo from what he called a "soldier rifle" before leaving, i.e. fire from a gun of R5 type.
45. Mr Dlamini features later in my chronology because his house was singled out for searching by the Mzamba police later on 28 January. Subsequent to the attack on his house and the theft from his house, Mr Zandla Dlamini reported to me and also to the meeting at Komkhulu 21 January that the men in the night 30 December 2015 first fired single gun shots before they left and then a long salvo that made the soil shake as he lied in the field.
46. In the morning on 30 December 2015, two of the severely injured men were taken to Gamalakhe for treatment. X-rays were conducted on Thokozani at Gamalakhe and it was discovered that he had broken his leg just above the ankle. He was referred to Port Shepstone

Hospital to undergo orthopaedic surgery on 4 January 2016. Mthandelwa Ndovela also had his wounds treated, although the fracture in the right arm wasn't discovered there but later at the hospital in Bizana, and they were both discharged.

47. From the Gamalakhe, I and community members escorted the two injured men to Mzamba Police Station to report the attack and lay criminal charges against the attackers. The Police took down a statement and opened a case (/12/2015). The State Prosecutor also interviewed the victims. A separate case was opened by Mr Zolile Ndovela (99/12/2015) for assault with intent to cause grievous bodily harm. Mr Zadla Dlamini complained about the theft of his goods and an investigation was formally initiated.
48. On the same day a community meeting was again held at the Headwoman's homestead. At around 13h00, whilst everyone was seated at the meeting, a gunshot was heard very near to the homestead. When they went to investigate they saw a man fleeing the area.
49. Mr Mzamo Dlamini, deputy chair of the ACC, had by this time got access to the direct number of the MEC of Police in EC. He phoned the MEC. One hour after his call to the MEC, police vans from Mzamba, Bizana and Mount Frere were circulating in Mdatya.
50. On 31 December four men were arrested in the morning in connection with the assault. Their names are Mzukhona Bhele, Thembile Ndovela, Xolile Dimane, and Simthandile Bhele. They were arrested and formally charged after being brought to the police station by Mr Madizikela to who had fetched them in Baleni where they were hiding. As I explain elsewhere, it was also on this occasion that, according to reliable sources, that Chief Lunga Baleni and Mr Zamile Qunya were present early at the police station where they attempted to secure the release of the accused Bhele brothers and the two others.
51. For purposes of this statement I shall not elaborate on the charges and bail application of the accused but to mention a few facts that are relevant to the perception of the community:
 - a. Mr Zamile Qunya and Mr Lunga Baleni [Mr Lunga Baleni and his wife both being directors of the Xolco empowerment partner of TEM; and Mr Zamile Qunya being a director of Blue Bantry which is connected with MRC as well as of MSR that operates the Tormin mine in the Western Cape] attended at the Mzamba police station after the arrest to pay bail on behalf of the families. Police bail was not granted. The charges were too serious.
 - b. The lawyer who represented the four accused in the 5 day bail hearing is Mr Ximba, the same person who represented Xolco in the interdict case that flowed from the incidents 3 May 2015 which I described above. The accused in the bail hearing applied for the magistrate to recuse himself because he was allegedly biased in favour of the community. This application did not succeed.
 - c. Mr Qunya was instructing the attorney. He attended the first two days of the hearings. He was speaking to the attorney during breaks and in the courtroom during the proceedings.
52. I attended the hearings of the bail application over five days. Many of the members of the community did the same.

53. The accused got bail under strict conditions that they were not to interfere with any witnesses or the injured complainants.
54. The final day of the hearing was Monday 18 January when bail was granted, the trial being postponed to 12 February 2016. Our community decided to discuss the new developments on Thursday the same week at our next meeting at Komkhulu, i.e. on 21 January.

The SAPD house to house searches on Thursday morning 21 January and

55. On the evening of the 20th of January, we received reports that Capt. Ntlangula had been observed walking through Mtentu village together with one of the men implicated in the 3 May attack and also named in the interim interdict, Sizwe Shezi.
56. Early Thursday 21 January, on the same day that all five villages was preparing for an important meeting at the Great Place 11.00 a.m. to discuss the situation where the four had been let out on bail, their guns had not been handed in to the police and at least two other culprits were still at large, police invaded Mtentu, Xolobeni and Mpindweni villages. They were so many so and some came in private cars. They were "looking for guns". The policemen mainly came from Mpisi police station, but there were also police there from Bizana. There were a total of 39 vehicles, according to the reports.
57. In some areas the members of the SAPD went to certain houses only, and skipped other houses. To some of the leaders of our community it appeared that specific houses of known ACC leaders were targeted despite the fact that we do not have illegal firearms.
58. An ACC member, Mr Siyabonga Ndovela in Mtentu, objected to the SAPD forcing access to his home if they cannot produce a search warrant. He also asked for the identity of the police and from where they came. The answer was: "We are SA police". They could not produce a warrant, but went into his house, throwing out beds and furniture, including the clothes and belongings of his young child.
59. The SAPD members who searched Mr Ndovela's house said that they were looking for firearms and alleged that he had a fire arm. They said that they knew that he had a fire arm. They also interrogated him about his motorbike and its license. He asked them why they were doing this and after some discussion they asked him if he supported mining. The same question was asked to his wife. He asked if the police could help him whether he is supports mining or not. He was then arrested, unclear for what, and had to accompany the SAPD to the Mpisi police station. At the police station the charges were not proceeded with and the police had to let him go, after he had refused to give finger prints as there were no charges against him.
60. Two other community members in Mtentu were also arrested for growing dagga. They paid admission of guilt fines.
61. The reports received stated that of 5 houses in the Mtentu area were searched, all of them belonging to known members of the ACC. Many other houses were not searched.
62. In the other villages there were house to house searches according to reports. However in certain instances people left their homes, leaving the doors open and gathered at a distance. The SAPD did not make much of an effort to search the houses vacant of people, according to reports received on 21 January 2016. Attendants at the meeting questioned the conduct,

stating that it looked like the raid was aimed at intimidating people rather than a search for firearms.

63. Our concern with the searches conducted on 21 January relates to the following:
 - a. Only certain houses were searched. I show below that persons associated with the accused and those who were interdicted in May 2015 were not searched;
 - b. The searches occurred without warrants;
 - c. Only 3 of the 5 villages were searched but the Mdatya village where the assaults happened in December was not searched.
64. On Thursday afternoon 21 January, at the regular weekly community meeting, the members present considered the various report and resolved to remain calm and peaceful in the face of what was perceived by participants to be provocative behaviour of people from outside the community who supported mining, and perceived partial conduct by the SAPD. The meeting also resolved to request the community's lawyers to bring it to the attention of the authorities that there is a perception of lack of independence on the side of the SAPD.
65. Community members questioned the timing of the raid, 3 days after the 5 day bail hearing and three weeks before the trial relating to the assault of community members on 30 December. It is not that the police cannot and should not maintain law and order. It is just that it looks strange that after many years of no police visibility, the SAPD now had this expensive raid with a handful of arrests on minor offences. By all means the firearms must be found, especially the automatic rifle, but the wrong villages and houses were targeted.
66. On Friday 22 January the premier of the Eastern Cape Province held a meeting in Mbizana and the leadership of our community was invited to attend. The leaders had to answer to allegations and a complaint by Chief Lunga Baleni that the community was not supporting development of his land. This is of course nonsense. It is not his land or his development and he cannot pursue his private financial interests as director of Xolco/TEM, the mining rights applicant, through public offices. I attended the meeting that was also concerned with the land claim of a neighbouring community. With me was the secretary of the Headwoman's council. We were designated by her counsel to represent her.
67. The Xolobeni issue and the complaint by the chief was on the agenda of the meeting. The matter was called at 13h00. But by that time Mr Lunga Baleni had already left the meeting and the building. The chair of the premier's meeting then closed the meeting because the complainant was no longer present.
68. On the same day, in the afternoon, I attended at the governance imbizo called by the Queen of the Pondo. The regentess in her summary of the discussions urged her followers to act in an accountable manner and support community participation in decision making. She also undertook to formally express her concern with the government departments and SAPD that they are not always seen to be impartial.

The incidents on 28 and 29 January 2016

69. On Thursday 28 January 2016 a small gathering of community members in Mdatya village was confronted by about 10 persons. The 10 person band or gang included all of the four accused, now out on bail, Xolile Dimane, Thembile Ndovela, Mdlele Simthandile Bhele and Mto Mzukhona Bhele, as well two persons associated with the accused who are implicated with them in the 30 January assault but who have not been apprehended by the SAPD. The verbal confrontation turned ugly when members of the gang took out firearms and waved them

- around threatening to shoot members of the community. A number of community members witnessed the volatile scene and are willing to give evidence of what happened.
70. The gathering dissolved. Two members of the gang left the scene and were witnessed walking to a police vehicle which was parked some distance away. The two gang members walked up to the vehicle and spoke to the police officers in the vehicle as if making a report.
 71. On Friday 29 January in the early morning, the SAPD raided the Mdatya village. A total of four houses were searched. The SAPD said that they were searching for illegal firearms and dangerous weapons. There were eight vehicles of the SAPD and a large number of members. Only four houses were actually searched. Many houses were not searched, including the house well known to the community where members of the gang of ten, the suspects of the incident the previous day, often congregate.
 72. One of the houses searched was the home of Mr Zadla Dlamini, the complainant about theft on 30 December. He was immediately arrested for possessing a dangerous weapon, the weapon being the slaughtering spear used for the ritual killing of cattle and which he displayed prominently in his house. He was also charged for the dagga plant in his food garden. He was taken to the Mzamba police station and fined for the dagga. He is still waiting for his spear.
 73. Another community member was threatened that the farming equipment, garden hoe and hacking knife would be taken from them. After a long discussion, the police left.

The purpose of this statement

74. Our community asked our lawyers to contact the SAPD and explain to the SAPD that there a widespread perception amongst community members that the SAPD is not acting in an impartial manner and not doing the necessary investigations and taking the initiative to arrest and support the prosecution of the real criminals.
75. The bail hearing took 5 days and the accused were released on bail. But the community questions whether they are keeping to their bail conditions. They were again at it brandishing fire arms and threatening to assault and shoot community members. It appears that nothing is being done about it.
76. Our lawyers met with Captain Freemantle in Mbizana on 22 January 2016, and were in telephonic conferences with Brigadier Mtukushe [082 779 7267] on Friday 29 January 2016. Our lawyers reported to us on the thrust and detail of the conversations. Our concerns were raised and the officers invited us, through our lawyers, to provide them personally and directly with evidence that could lead to the discovery of illegal firearms. We undertook to inform community members who witnessed these events to bring their evidence directly to brig Mtukushe and Capt. Freemantle.
77. The SAPD has several times engaged with community members about their possession of bush knives and traditional spears. It should be well known by SAPD in the area that many, if not all households, have such tools. It is questionable why the SAPD is arresting persons for possessing their household and livelihood tools.
78. In the meantime, I asked our lawyers to present this statement to the authorities, to record the concerns our community and to urge the authorities to take steps to ensure the safety and security of our community. We also request that he SAPD and the prosecutor take steps to report on the progress and outcomes of the police investigations and prosecutions relating the events of

a. 3 May 2015

- b. 18 – 20 December 2015;
- c. 30 December 2015;
- d. 28 January 2016.

Signed before witnesses and dated 2016-02-11



NONHLE MBUTHUMA

NONHLE MBUTHUMA

Nonhle Mbuthuma