

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 119      19 AUGUST 2013      PAGES 12248 TO 12289



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1 [PROCEEDINGS ON 19 AUGUST 2013]  
 2 [14:04] CHAIRPERSON: We are starting later today  
 3 than we'd originally intended to because Advocate Semenya,  
 4 the leading counsel for the police service's mother died  
 5 last week and he and the members of the SAPS team were at  
 6 her funeral this morning as was Commissioner Tokota. They  
 7 requested us, therefore, to start at 2 o'clock this  
 8 afternoon which we agreed to. I'm sure all those  
 9 associated with the Commission will join with me in  
 10 extending our condolences to the Semenya family for the  
 11 loss of Advocate Semenya's mother and we hope and pray that  
 12 her soul will rest in peace with light perpetually shining  
 13 upon it. We hope that what we said will be conveyed to  
 14 Advocate Semenya and the family. This morning the  
 15 Constitutional -  
 16 SPEAKER: Sorry, Mr Chairman, before you  
 17 proceed.  
 18 CHAIRPERSON: Yes, forgive me.  
 19 SPEAKER: On behalf of SAPS legal team  
 20 and the Semenya family we would like to say thanks for the  
 21 indulgence that we were granted to allow us to go to the  
 22 funeral of our colleague's mother and we will also convey  
 23 the message.  
 24 CHAIRPERSON: This morning the  
 25 Constitutional Court handed down its judgment in the

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1 application brought by the arrested and injured miners for  
 2 relief in respect of the funding they sought for their  
 3 costs in respect of their continued participation in the  
 4 proceedings of the Commission. The judgment in paragraph  
 5 19 of the judgement it is stated that the application was  
 6 dismissed. But that doesn't bring the matter before us, as  
 7 far as the funding is concerned, to an end because as I  
 8 have indicated previously, I was informed that there is a  
 9 possible donor who is contemplating providing funding for  
 10 the arrested and injured miners. It was anticipated that  
 11 the decision of the possible donor would already have been  
 12 reached but I was informed this morning that the final  
 13 decision will be made tomorrow, and that I would be  
 14 informed by close of business tomorrow afternoon whether  
 15 the answer would be yay or nay. I understand that counsel  
 16 for Lieutenant Baloyi and counsel for the Monene family are  
 17 here, prepared to continue with the cross-examination of  
 18 Major-General Mpembe and in the circumstances it seems to  
 19 me to be appropriate that they should be permitted to be  
 20 cross-examined. I see Mr Mpofu is here, depending upon the  
 21 decision of the donor, or he may well be back in a funded  
 22 capacity as it were and if he is, he will of course, have  
 23 the opportunity of reading the transcript of what's going  
 24 to happen today. Although I don't know how long he's going  
 25 to be with us this afternoon and tomorrow. And if, of

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1 course, the answer is no then we will have to have a  
 2 meeting to consider, with the parties as to in what way of  
 3 working with the Commission should be altered to  
 4 accommodate the fact. And we would seek at the meeting to  
 5 find a way of ensuring that the report ultimately produced  
 6 by the Commission is not one sided. But that's a matter  
 7 which may in fact fall away if the potential donor sees its  
 8 way to clear to make the funding available. It would  
 9 render these proceedings more inclusive than they would  
 10 otherwise be. Do you wish to say anything, Mr Mpofu?  
 11 MR MPOFU: Yes, thank you very much,  
 12 Chairperson, thank you. As I indicated, Chairperson, we  
 13 are here solely just to report back as you've already  
 14 touched on the issue of the Constitutional Court and also  
 15 to maybe map out what the way forward is in terms of our  
 16 instructions from clients. But before I touch on those  
 17 matters, Chairperson, which is the Constitutional Court and  
 18 the instructions of client, I'd like to just indicate that  
 19 we are grateful for the efforts that the commissioners have  
 20 made and we hope that once the decision is taken we will  
 21 have an opportunity to meet with the potential donors.  
 22 Obviously just to iron out the terms of that funding but  
 23 for now it's simply to say thank you to the commissioners  
 24 for those efforts.  
 25 CHAIRPERSON: Thank you, Mr Mpofu.

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1 MR MPOFU: More particularly a question  
 2 that will arise, which is linked to what I'm going to say  
 3 is whether that funding is in the nature of the interim  
 4 funding that we were talking about or whether it is more  
 5 long term. But those are matters that obviously will be  
 6 ironed out with the funder at the right time. And I say  
 7 that, Chairperson, because the Constitutional Court, in its  
 8 wisdom, decided the matter as you have seen, on the basis  
 9 that it was confined to part A of the application which was  
 10 just the issue of the interim funding. Our own view -  
 11 unfortunately we were not given a hearing, the  
 12 Constitutional Court is entitled to make a decision on  
 13 their papers. Had we been given that hearing we would have  
 14 indicated that our own view and that in concurrence with  
 15 the counsel for the President and the Minister was that the  
 16 appeal would have been heard on both part A and part B and  
 17 the matter would have been finalised. But unfortunately we  
 18 didn't have that opportunity. And that therefore means  
 19 that - and I've just had a discussion, the counsel for the  
 20 President and the Minister called me about an hour ago,  
 21 also he was equally surprised but felt that what this means  
 22 now is that the Constitutional Court in so many ways has  
 23 said that it doesn't want to pre-empt the review  
 24 application itself which is part B. So what has happened,  
 25 unfortunately is now to resuscitate that part of the

1 application, which means that effectively the  
2 Constitutional Court is sending us back to the High Court  
3 for the review application, for part B. And in fairness  
4 the Constitutional Court did say that this decision does  
5 not pre-empt the outcome of the main application. But what  
6 it does mean, Chairperson, with your permission just to  
7 explain, what it does mean is that we are back to square  
8 one where the issue of interim funding then surfaces. In  
9 other words what should happen between -

10 CHAIRPERSON: To interrupt you, my  
11 understanding from what I've heard from the potential donor  
12 is it mightn't - what is envisaged might not be limited to  
13 interim funding.

14 MR MPOFU: Yes. Well it might, or it  
15 might not, Chairperson, if we decide to pursue the main  
16 application then of course the question - all I'm saying is  
17 that the question that arises what happens between now and  
18 then? And I must add, Chairperson, the parties by  
19 agreement in the amended notice of motion had said that the  
20 part B should be on an expedited basis. So the question  
21 that arises is assuming we'll get an expedited date,  
22 assuming the instructions will be to pursue part B, what  
23 then happens between tomorrow and that date? And as  
24 Chairperson has correctly pointed out part of the answer to  
25 that question might be whatever discussions we then have

1 with the donor. Another part is the instructions which I  
2 will talk about just now. And maybe, Chairperson, because  
3 already there have been some disturbing reporting on the  
4 outcome of the Constitutional Court, in fairness it is to  
5 explain that it was only on part A but that also in  
6 paragraphs 15 and 16 of the Constitutional Court judgment -

7 CHAIRPERSON: In view of the fact that a  
8 number of people in the courts who haven't heard or seen  
9 what's in those paragraphs and I take it there may well be  
10 many people watching these proceedings on YouTube or on  
11 television, it perhaps would be helpful if you read those  
12 paragraphs out so that they and everybody could in fact be  
13 aware of what the CC has said in that regard.

14 MR MPOFU: Thank you, Chairperson. Yes,  
15 thank you, Chairperson. Paragraph 15 of the judgment says  
16 the following, "It may be that it would be commendable and  
17 fairer to the applicants that they be afforded legal  
18 representation at state expense in circumstances where  
19 state organs are given these privileges and where mining  
20 corporations are able to afford the huge legal fees  
21 involved. The power to appoint a commission of inquiry is  
22 mandated by the Constitution. It is afforded by the  
23 President as part of his executive powers. It is open to  
24 the President to search for the truth through a commission.  
25 The truth so established could inform corrective measures

1 if any are recommended, influence future policy, execution  
2 action, executive action and even the initiation of  
3 legislation." It goes on to say "A commission search for  
4 truth also serves indispensable accountability and  
5 transparency purposes. Not only do the victims of the  
6 events investigated and those closely affected need to know  
7 the truth, the country at large does too. So ordinarily a  
8 functionary setting up a commission has to ensure an  
9 adequate opportunity to all who should be heard by it."

10 And the Constitutional Court goes on "Absent a  
11 fair opportunity the search for truth and the purpose of  
12 the Commission may be compromised." And paragraph 16,  
13 Chairperson, it says "This means" - the Constitutional  
14 Court then says "This means that unfairness may arise when  
15 adequate legal representation is not afforded." And then  
16 it says, "But this doesn't mean that courts have the power  
17 to order the executive branch of government on how to  
18 deploy state resources. And whether the desirable  
19 objective of equality of arm before a commission translates  
20 into a right to legal representation that must be provided  
21 at State expense is a contestable issue. A consideration  
22 that comes into play is that it is the object of the Legal  
23 Aid Act to render or make available legal aid to indigent  
24 persons and to provide legal representation at State  
25 expense as contemplated in the Constitution. It's

1 provisions have not been challenged as constitutionally  
2 invalids nor has the refusal by Legal Aid, South Africa to  
3 grant the applicants legal aid been challenged on review."  
4 Thank you, Chairperson. Chairperson, I'm grateful for the  
5 indulgence. I'm reading through that, it should be made  
6 clear that the question which the Constitutional Court says  
7 is contestable which is whether such legal representation  
8 should be provided at State expense is still open and it is  
9 the question that will be subject to instructions debated  
10 when the part B of the application is heard, hopefully on  
11 an expedited basis.

12 CHAIRPERSON: If it becomes necessary.

13 MR MPOFU: Should it become necessary,  
14 that's correct. Now the last issue then, Chairperson that  
15 I would like to deal with is the question of - as you can  
16 see our clients arrived at the Constitutional Court and  
17 between the delivery of the judgment and now we have been  
18 consulting with them.

19 [14:24] Those consultations are ongoing, Chairperson, but  
20 so far I can just mention that their feeling is that  
21 firstly they would have preferred it if they had been given  
22 a hearing to air their views. Whether they win or lose the  
23 application is something else but to have been given the  
24 opportunity and for that reason they seem inclined at this  
25 stage to want to pursue part B but that was before the news

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1 that we got here. So obviously that will now be  
 2 incorporated into the consultations. They have also asked  
 3 us to, or rather instructed my attorneys to seek permission  
 4 for them to hold a peaceful demonstration or gathering for  
 5 lack of a better word, and that is a matter that we are  
 6 also consulting with them and they indicated that they  
 7 might be holding a peaceful march to the Union Buildings  
 8 among other places in pursuit of their rights to legal  
 9 representation at state expense. But all those matters  
 10 will also, I suppose, be incorporated on the outcome of the  
 11 discussions we'd have with the funders. But those are our  
 12 instructions at this stage, Chairperson.

13 There is, of course, still the prospect of it  
 14 being settled even before we could go to court. But  
 15 unfortunately, Chairperson, then the most important part of  
 16 our instructions are that until all those issues are  
 17 resolved, whether in court or in the streets or with the  
 18 discussions with the donor or whatever, until there is  
 19 funding on the table their position is that they their  
 20 participation will be provisionally withdrawn or rather  
 21 they'll continue with the provisional withdrawal of their  
 22 participation.

23 But, Chairperson, as usual when we asked them to  
 24 give us an opportunity to come to this forum so that we can  
 25 say exactly rather than leaving it to speculation, they

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1 kindly allowed us to come and brief the Commission on the  
 2 status quo. Thank you, I appreciate the opportunity.  
 3 Sorry, Chairperson, I've just been given an instruction. A  
 4 small thing, just to say, well two things, Chairperson, one  
 5 might seem unrelated. As the Chairperson knows that on  
 6 Friday was the commemoration service of the victims. It  
 7 turns out that there were two commemoration services and  
 8 just happy to report, Chairperson, that everything went  
 9 smoothly and the statement was made there and I would like  
 10 to repeat it now that the people who are criticising the  
 11 commission should exercise some restraint and we made it  
 12 clear that it is not your fault or the commissioners' fault  
 13 that the delays have happened, Chairperson. And also that  
 14 it's unfair to criticise a judge by commentators, some of  
 15 whom have never even been here because a judge is not able  
 16 to answer for himself and I think the big crowd that was  
 17 there appreciated those remarks, Chairperson. And we made  
 18 the point very clear that our confidence in the commission  
 19 remains unshaken. We wouldn't be doing all these efforts  
 20 to get funding and to get legal representation into a  
 21 commission that we believed was a waste of time. That  
 22 would be a contradiction in terms and I just wanted to say  
 23 that those remarks were appreciated, Chairperson. The last  
 24 point, Chairperson, that I've been asked to mention is that  
 25 the congregation that met on Friday among the things that

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1 they did was a very touching move where they circulated  
 2 buckets to collect money, or a collection to assist the  
 3 legal team and people were putting R5, R10, whatever they  
 4 could. And I don't think the money - we've entrusted the  
 5 money to Bishop Seoka and I don't know if he has already  
 6 counted it but the issue's not really how much it is. I  
 7 think that the mere fact that they should make that gesture  
 8 also indicates the fact that they want the commission, as  
 9 soon as possible, to continue and to find the truth and for  
 10 them to get the closure that is needed. Thank you,  
 11 Chairperson.

12 CHAIRPERSON: Thank you, Mr Mpofu. Mr  
 13 Gumbi, are you in a position to cross-examine the Major-  
 14 General?

15 MR GUMBI: Yes, Chairperson but I think  
 16 my learned colleagues will start first. There are certain  
 17 information on -

18 CHAIRPERSON: Sorry to interrupt you,  
 19 that's your colleague Advocate Masevhe.

20 MS MASEVHE: Yes that's correct,  
 21 Chairperson, we are ready to proceed.

22 CHAIRPERSON: Yes.

23 MR MPOFU: But before any proceedings, in  
 24 case I overstep my mandate, could we be excused. Thank  
 25 you, Chairperson, for the opportunity.

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1 CHAIRPERSON: You've got a lot of clients  
 2 here, I don't know whether they want to go as well.  
 3 Perhaps we should take a short adjournment for five minutes  
 4 so they can all leave and then we can re-assemble.

5 MR MPOFU: Yes thank you, Chairperson.

6 [COMMISSION ADJOURNS COMMISSION RESUMES]

7 [14:45] CHAIRPERSON: I'm informed that the  
 8 interpreter has gone across the courtyard and will be  
 9 interpreting to those who wish to receive the benefit of  
 10 the interpretation in the room opposite where the  
 11 simultaneous translation equipment has been set up. Major-  
 12 General, you're still under oath. It's a long time ago  
 13 that you took the oath. Perhaps you should take it again.  
 14 Stand up, please. Do you swear the evidence you'll give  
 15 before the Commission, the further evidence you'll give  
 16 before the Commission will be the truth, the whole truth,  
 17 nothing but the truth. Please raise your right hand, say,  
 18 "I swear, so help me God."

19 WILLIAM MPEMBE: I swear, so help me God.

20 CHAIRPERSON: Thank you. Please sit  
 21 down. Ms Milwesi, you're going to - sorry, Ms Masevhe, I  
 22 must get it right -

23 MS MASEVHE: Yes, Chairperson, I'm here  
 24 now.

25 CHAIRPERSON: Ms Masevhe, I got it right

<p style="text-align: right;">Page 12260</p> <p>1 the second time. Please begin with your cross-examination 2 of the witness.</p> <p>3 CROSS-EXAMINATION BY MS MASEVHE: Thank 4 you, Chairperson. Just for the record, my name is Takalani 5 Masevhe. I represent the family of Warrant-Officer Hendrik 6 Tsietsi Monene, the warrant-officer who was murdered on the 7 13th of August 2013. General, good afternoon.</p> <p>8 MAJOR-GENERAL MPEMBE: Good afternoon, 9 Advocate.</p> <p>10 MS MASEVHE: Yes, General, I would like 11 to take you back – or I see my colleagues for the South 12 African Police Services would like to mention something, 13 Chairperson.</p> <p>14 CHAIRPERSON: Yes, they can do so. I 15 thought they might be going to tell you that it was 2012 16 when your client's relative was killed, but if there is 17 anything else they want to say, they must say it now or 18 forever hold their peace.</p> <p>19 MR NGALWANA: Chairperson, I want to say 20 this on the record, so it's rather a challenge when this – 21 ah, there it's come out now. Chairperson, sorry for the 22 interruption. I had a brief conversation with my two 23 learned friends who are about to cross-examine now. It's 24 not an objection; it's perhaps something of guidance that I 25 would seek from the Commission. Usually when a cross-</p>	<p style="text-align: right;">Page 12262</p> <p>1 there? And the weight of the evidence is a matter to be 2 considered as well, but anyway, we'll deal with that when 3 we get there. I did understand from Mr Gumbi that he's got 4 some documents which he will be giving you before he cross- 5 examines. He hasn't done so yet, so your position will be 6 covered as far as he is concerned. You heard what Mr 7 Ngalwana said; please commence with your cross-examination.</p> <p>8 MS MASEVHE: Thank you, Chairperson. 9 Although it's a definite sure thing that our cross- 10 examination is going to cover the statement of two 11 witnesses that have been circulated to various parties, and 12 while it's true that those witnesses are not going to be 13 called by us, but they are going to be called by Adv Mpfu. 14 We have canvassed this issue with the evidence leaders and 15 our view, if I might add at this stage, is that if Mr Mpfu 16 for an example doesn't want to call the specific witnesses, 17 there are statements which are before this Commission and 18 we believe that we should be able to deal with the contents 19 in as far as it relates to our client, or the circumstances 20 wherein he was killed, with the General. Otherwise if we 21 don't do it we lose this opportunity with the General at 22 this stage, and –</p> <p>23 CHAIRPERSON: The statements have been 24 filed. I understand that if Mr Mpfu doesn't call them 25 they may well be called by the evidence leaders in any</p>
<p style="text-align: right;">Page 12261</p> <p>1 examiner cross-examines a witness, one of the things he or 2 she does is to put the version of his or her witness to the 3 cross-examinee. Now as I understand it, none of the 4 statements on which my two colleagues are going to cross- 5 examine were deposed to by their witnesses. These are Mr 6 Mpfu's witnesses. I checked with Mr Mpfu about whether 7 or not he's going to call these witnesses so that we can 8 test their version and their evidence under cross- 9 examination. I thought I was going to do this on record 10 while he was here, but he sprung it on me when he decided 11 no, we are going to step out. So I pulled him by his 12 jacket sleeve and asked him a question, and he said well, 13 we're not sure; we may, we may not, and so it puts a little 14 bit of a quandary if a cross-examiner is going to use a 15 statement of a witness who may not be called, we would have 16 no way of testing that in cross-examination.</p> <p>17 CHAIRPERSON: Well, perhaps you will deal 18 with that problem as and when it arises. Of course we have 19 the other problem that if the cross-examiner doesn't put 20 what the witness says because the witness may not come and 21 the witness then does come, then your client has got to be 22 recalled. So one way to deal with it might be to disregard 23 that part of the cross-examination based upon statements 24 put by a witness who ultimately doesn't come, but anyway, 25 shall we cross that bridge when we get there, if we get</p>	<p style="text-align: right;">Page 12263</p> <p>1 event.</p> <p>2 MS MASEVHE: That is correct, 3 Chairperson.</p> <p>4 CHAIRPERSON: So anyway, proceed in the 5 meanwhile and as and when there's an objection we can deal 6 with it.</p> <p>7 MS MASEVHE: Thank you, Chairperson. 8 General, on the 7th of June 2013 when you were testifying in 9 chief you testified that you saw Warrant-Officer Monene 10 being chopped and killed in front of you. Do you recall 11 that part of your evidence, General?</p> <p>12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson.</p> <p>14 MS MASEVHE: And you further testified, 15 General, that you saw how Warrant-Officer Lepaaku was 16 killed. Do you recall that as well?</p> <p>17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson.</p> <p>19 MS MASEVHE: For ease of reference, that 20 is contained on the record, page 11813, line 4 to 8. I'm 21 not going to read it out. General, the family of Warrant- 22 Officer Monene is particularly interested in finding out 23 that, you know, leading to the event where he was killed, 24 was he entrapped within this group of protesters? General, 25 my question is that was he entrapped by the protesters,</p>

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1 that is Warrant-Officer Monene, when he was killed?  
 2 MAJOR-GENERAL MPEMBE: Chairperson, maybe  
 3 if I may be explained what is meant by "entrapped"?  
 4 MS MASEVHE: Encircled by the group of  
 5 protesters when he was killed.  
 6 CHAIRPERSON: I think the point is the  
 7 people were around him and he couldn't get out, so in that  
 8 sense he was trapped there, and then he was then killed.  
 9 So what they want to know from you, is that what you saw?  
 10 MAJOR-GENERAL MPEMBE: Chairperson, the  
 11 protesters, they, Warrant-Officer Monene was out of the  
 12 Nyala and when they were attacked I couldn't see whether  
 13 there were protesters behind him. The only incident where  
 14 I remember is that the protesters were coming from the  
 15 front and there might also be the others that were on the  
 16 side, but at the back there were the police. So at this  
 17 stage one could not say that he was entrapped.  
 18 MS MASEVHE: Okay, General, how many  
 19 protesters did you see each hacking and killing Warrant-  
 20 Officer Lepaaku and Warrant-Officer Monene, if you recall  
 21 at all? How many did you see?  
 22 MAJOR-GENERAL MPEMBE: Chairperson, one  
 23 could not count them, but there was a group of protesters.  
 24 I could not count to say how many, but there were many who  
 25 attacked Warrant-Officer Monene.

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1 CHAIRPERSON: Can you give us an  
 2 indication, you say they attacked him; did they attack him  
 3 with pangas or with spears or assegais? What weapons did  
 4 they use?  
 5 MAJOR-GENERAL MPEMBE: Chairperson, the  
 6 instruments that I saw there were pangas, inculas, and they  
 7 also utilised knobkieries.  
 8 CHAIRPERSON: Approximately how many?  
 9 You know, you say you can't give us the exact number, but  
 10 you know, was it two or three? Was it half a dozen or was  
 11 it a dozen or more than that? Approximately how many  
 12 people were attacking him?  
 13 MAJOR-GENERAL MPEMBE: Chairperson,  
 14 approximately I can count from five up, plus or minus five,  
 15 and the only thing that I know also, they took his firearm.  
 16 MS MASEVHE: And General, how far were  
 17 you from this attack?  
 18 MAJOR-GENERAL MPEMBE: Chairperson, I was  
 19 not so much closer nor far, but I could see what is  
 20 happening. I was at a reasonable distance from them.  
 21 MS MASEVHE: Can you maybe indicate,  
 22 General, by indication of metres?  
 23 CHAIRPERSON: It's sometimes easier to  
 24 ask him if he can point out in the auditorium, in the  
 25 council chamber more or less what the distance was, and

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1 then we can ask someone – I think the attorney for the  
 2 police services helped us in the past – to pace out the  
 3 distance. He did it very well last time, so I'm sure he'll  
 4 repeat his success. Can you indicate to us more or less in  
 5 the council chamber how far away you were from Mr Monene,  
 6 Lieutenant Monene, when he was being attacked?  
 7 Approximately.  
 8 MAJOR-GENERAL MPEMBE: Chairperson, as I  
 9 indicated last that I'm very weak in what, in measurements,  
 10 but I remember –  
 11 CHAIRPERSON: I understand that, but  
 12 we're not asking you for mathematical precision. You know,  
 13 more or less a distance between you and that side of the  
 14 table, you and the other side of the table, or distance  
 15 between you and Adv Budlender, or counsel for the police,  
 16 or how far, more or less?  
 17 MAJOR-GENERAL MPEMBE: Chairperson, from  
 18 that seat and I think somewhere here, that could be the  
 19 distance. I was on the other far side –  
 20 CHAIRPERSON: That seat, I'm not sure  
 21 which one you refer to.  
 22 MAJOR-GENERAL MPEMBE: Let's say the  
 23 first seat on the other side –  
 24 CHAIRPERSON: Oh, the back row –  
 25 MAJOR-GENERAL MPEMBE: Yes.

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1 CHAIRPERSON: The back row –  
 2 MAJOR-GENERAL MPEMBE: And then it was on  
 3 the, he was on the extreme left-hand side and there was a  
 4 Nyala behind him and the Nyala also moved there. That's  
 5 how I remember.  
 6 CHAIRPERSON: So the distance is from the  
 7 back row to where?  
 8 MAJOR-GENERAL MPEMBE: And to that table  
 9 there.  
 10 CHAIRPERSON: Is that the table –  
 11 MAJOR-GENERAL MPEMBE: It's one, the  
 12 second table –  
 13 CHAIRPERSON: The second table, yes, I  
 14 see, from the back.  
 15 SPEAKER: 15. 1-5.  
 16 CHAIRPERSON: Thank you very much. So  
 17 there you have the answer; approximately 15 paces.  
 18 MS MASEVHE: Thank you, Chairperson. And  
 19 General, if you were at the distance of 15 metres, what  
 20 prevented you and your colleagues from trying to ward off  
 21 these protesters from hacking Warrant-Officer Monene to  
 22 death?  
 23 CHAIRPERSON: Were there people in  
 24 between, or were there people between Warrant-Officer  
 25 Monene and you at the time the hacking was taking place?

<p style="text-align: right;">Page 12268</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, as I 2 said, the people that were there is Lieutenant Baloyi, who 3 was also under attack, and others they were in a Nyala, and 4 there were some few that were outside. So others, as I 5 indicated with my drawings, they were at the back. 6 CHAIRPERSON: You say at the back, you 7 see, but the question you're being asked is was it possible 8 for you to run forward to where the attack was taking place 9 and assist in warding off the attack? 10 MAJOR-GENERAL MPEMBE: Chairperson, the 11 attack would have been warded off and as it has been seen 12 on the video, there was tear smoke and I think that also 13 played a major role, and then the protesters moved with the 14 tear smoke to attack the police, and they were very close 15 nearer when they attacked the members, and I think that 16 played the major role in terms of how those police were 17 attacked. 18 MS MASEVHE: General, how did you – I 19 would assume that you were with a group of other police 20 officers. Is that correct? Were you in a group of other 21 police officers? Were you with other police officers when 22 this happened? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MS MASEVHE: Now how did you and these</p>	<p style="text-align: right;">Page 12270</p> <p>1 been warded off, I also called off the police not to follow 2 them. 3 MS MASEVHE: Okay. General, in the event 4 that this Commission finds that the people who attacked 5 Warrant-Officer – or let me put it rather, who murdered 6 Warrant-Officer Monene and Warrant-Officer Lepaaku should 7 be prosecuted, will you be in a position to can identify 8 these attackers, General? 9 MAJOR-GENERAL MPEMBE: Chairperson, as I 10 said, they attacked the Warrant-Officer in such a manner 11 that there were a group of five, upwards. But the only way 12 that one will be able to identify them is in accordance 13 with the circumstantial evidence. For example, we know 14 that the firearm of Warrant-Officer Monene was taken and I 15 know the people that I spoke with them during the 16 negotiation, and if anything like that firearm which was 17 the firearm of Warrant-Officer Monene can be found in 18 possession, I can place the person on the scene. Correct, 19 Chairperson, but with regard to me having communicated with 20 them earlier, and then also other materials that could be 21 found in possession of that suspect. 22 CHAIRPERSON: I understand people have 23 been arrested and charged in respect of this incident. Is 24 that correct? 25 MAJOR-GENERAL MPEMBE: Correct,</p>
<p style="text-align: right;">Page 12269</p> <p>1 other police officers evade, you know, this attack at the 2 scene? Because it seems like the police were being 3 attacked. How did you then survive this attack? 4 MAJOR-GENERAL MPEMBE: It's not a 5 question of surviving. I think all of us we could also 6 have been attacked, maybe been reached. It was the 7 question that Warrant-Officer Monene was more closer than 8 the other police officers. 9 MS MASEVHE: And General, why didn't you 10 or other officers, or rather you instruct other officers to 11 fire live ammunition or do something in order to ward off 12 these protesters? Why was it difficult to do that? 13 MAJOR-GENERAL MPEMBE: Chairperson, it's 14 not an easy instruction to say "fire," because each member 15 when he is under imminent attack, they know that he has to 16 defend himself, and as I have indicated from where I was, 17 the member had a firearm. There were also other members 18 nearer to him, and in such circumstances the member can 19 utilise his own discretion and the attack to the member 20 should be seen by the member, that the attack is unlawful 21 and is imminent. So under those circumstances, but what I 22 can say is that I did make sure that the police officials 23 also, we ran to the place to assist those members that were 24 attacked, and hence there was a time where the protesters 25 left the scene, and when I realised that the attack has</p>	<p style="text-align: right;">Page 12271</p> <p>1 Chairperson. 2 COMMISSIONER HEMRAJ: The question really 3 was whether you would be able to identify them if you see 4 them again. 5 MAJOR-GENERAL MPEMBE: The answer is yes, 6 on the ground that I did communicate with them and also for 7 the fact that they are being found in possession of the 8 firearm of Warrant-Officer Monene. 9 CHAIRPERSON: Of course you communicated 10 with the whole group of them, didn't you? We saw it on the 11 video, and so at that stage you didn't know which of them 12 was the one who, or were the ones who were going to attack 13 Warrant-Officer Monene. As far as the firearm is 14 concerned, that is, you correctly say, would be 15 circumstantial evidence. The real question is, will you be 16 able to say I saw that person as one of the people 17 attacking Warrant-Officer Monene, and it sounds from what 18 you say as if the answer to that one would be no, you won't 19 be able to go that far in your evidence. Is that correct? 20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson. 22 MS MASEVHE: General, let's go back to 23 your arrival at Marikana. You testified that on your 24 arrival at Marikana the Lonmin management had informed you 25 of the violence that had occurred in the few days before</p>

<p style="text-align: right;">Page 12272</p> <p>1 the 13th. Is that correct?</p> <p>2 MAJOR-GENERAL MPEMBE: Correct,</p> <p>3 Chairperson.</p> <p>4 MS MASEVHE: And you further testified</p> <p>5 that Brigadier Calitz had informed you that on the 12th of</p> <p>6 August the protesters had hacked and killed two Lonmin</p> <p>7 security, that is Mr Mabelane and Mr Hasaan Fundi. Is that</p> <p>8 correct?</p> <p>9 MAJOR-GENERAL MPEMBE: Correct,</p> <p>10 Chairperson.</p> <p>11 [15:04] MS MASEVHE: Now General, knowing the</p> <p>12 violence that there had occurred in these few days before</p> <p>13 the 13th, what measures were put in place by the police to</p> <p>14 ensure the safety of the police officers who were attending</p> <p>15 to the protesters on the 13th of August?</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>17 indicate that the commanders, and in particular I did</p> <p>18 mention Lieutenant-Colonel Merafe, that the members of</p> <p>19 different units had bulletproofs, and it's also the</p> <p>20 commander and the members' responsibility to have the</p> <p>21 bulletproof. Secondly is that they were orientated on the</p> <p>22 place and Colonel Merafe indicated that because he is</p> <p>23 working with them, he will continue orientating them. The</p> <p>24 members were issued, as I have indicated, there were</p> <p>25 different units on that day, that's Public Order Policing</p>	<p style="text-align: right;">Page 12274</p> <p>1 correct? We have photographs of them. You don't have to</p> <p>2 look at them, but the one was hacked and stabbed to death,</p> <p>3 and the other was hacked and shot. Now can you tell us</p> <p>4 whether Warrant-Officer Monene was the one who was shot as</p> <p>5 well as being hacked, or was he the one who was stabbed as</p> <p>6 well as being hacked?</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, he</p> <p>8 was hacked and he was also shot.</p> <p>9 MS MASEVHE: Now General, I would like to</p> <p>10 refer the Commission to the revised witness statement of</p> <p>11 Simphiwe Booi, Mr Simphiwe Booi, which is exhibit BBB3 on</p> <p>12 page 7, paragraph 33, that is – I don't know if you are in</p> <p>13 possession of the said statement. It's exhibit BBB3.</p> <p>14 MAJOR-GENERAL MPEMBE: Correct,</p> <p>15 Chairperson, I am in possession of the statement.</p> <p>16 MS MASEVHE: Now General, would you like</p> <p>17 to look at page 7 of that statement, paragraph 33?</p> <p>18 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p> <p>19 I'm on page 7, paragraph –</p> <p>20 CHAIRPERSON: Would I be correct in</p> <p>21 thinking this statement hasn't yet been put as an exhibit?</p> <p>22 Is that correct?</p> <p>23 MS PILLAY: Chair, it's exhibit BBB3.</p> <p>24 CHAIRPERSON: BBB3, oh, thank you. I was</p> <p>25 wrong then. Thank you.</p>
<p style="text-align: right;">Page 12273</p> <p>1 members, there were also National Intervention members,</p> <p>2 there were also TRT members, and members of the Public</p> <p>3 Order Policing also had pistols on themselves. So those</p> <p>4 were the measures that were taken in order to protect the</p> <p>5 members.</p> <p>6 Chairperson, I did indicate that I attended the</p> <p>7 place personally; I applied a situational appropriateness</p> <p>8 to ensure that there is no unnecessary confrontation with</p> <p>9 the protesters, and that also made us in terms of the</p> <p>10 measures that they were there, made me also to believe that</p> <p>11 the members were safe. Chairperson, the members, and in</p> <p>12 particular Warrant-Officer Monene, he was also being</p> <p>13 deployed, or posted to be in the Nyala. It is just maybe</p> <p>14 the commander that was there, how come that the members</p> <p>15 went outside the Nyala, because that to me as an iron</p> <p>16 vehicle could have been used as a safe house for the</p> <p>17 Warrant-Officer.</p> <p>18 CHAIRPERSON: Does that mean that you</p> <p>19 didn't order the occupants of the Nyala to get out of it?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct,</p> <p>21 Chairperson.</p> <p>22 CHAIRPERSON: Now before Adv Masevhe</p> <p>23 continues, one of the policeman who was killed on the spot</p> <p>24 was hacked and shot twice, and the other, what happened to</p> <p>25 the other? The other was hacked and stabbed. Is that</p>	<p style="text-align: right;">Page 12275</p> <p>1 MS MASEVHE: General, I would like to</p> <p>2 refer you to line 7 from the top where he testifies of the</p> <p>3 events of the 13th of August and he alleges that line 7, it</p> <p>4 starts with "Official attacks," and then it's got a full</p> <p>5 stop, but then I would like to start immediately after the</p> <p>6 full stop wherein he says, "When the negotiations failed</p> <p>7 and when the General started counting, we stood up, sang a</p> <p>8 song, and left. It seemed as if there was a non-verbalised</p> <p>9 understanding in terms of which the police were to escort</p> <p>10 us until we got back to the koppie. Then out of the blue I</p> <p>11 later heard shots being fired by the police. There was</p> <p>12 teargas and stun grenades fired by the police. Thereafter</p> <p>13 live ammunition was used." Now General, what I want to</p> <p>14 know from you is that how accurate is this statement? When</p> <p>15 was live ammunition fired by the police, if it was ever</p> <p>16 fired by the police?</p> <p>17 MAJOR-GENERAL MPEMBE: I just wanted the</p> <p>18 question to be repeated.</p> <p>19 MS MASEVHE: Okay, General, he says that</p> <p>20 live ammunition was used by the police. Maybe I can put</p> <p>21 small questions. The first question would be, was live</p> <p>22 ammunition ever used by the police on the 13th of August at</p> <p>23 that scene?</p> <p>24 CHAIRPERSON: Before you answer, can I</p> <p>25 ask you this question? You've seen the statement, have</p>



<p style="text-align: right;">Page 12276</p> <p>1 you? The statement that's been put to you.</p> <p>2 MAJOR-GENERAL MPEMBE: Yes, Chairperson –</p> <p>3 CHAIRPERSON: Have you read it?</p> <p>4 MAJOR-GENERAL MPEMBE: Ja, I've read it.</p> <p>5 CHAIRPERSON: I see, fine. So you may</p> <p>6 proceed. I was afraid that the passage might be taken</p> <p>7 effectively out of context – I'm not suggesting</p> <p>8 deliberately, but effectively out of context, and the</p> <p>9 witness might be at a disadvantage, but he doesn't seem to</p> <p>10 be, so you can carry on.</p> <p>11 MS MASEVHE: Thank you, Chairperson. Now</p> <p>12 General, the question is that did the police ever fire live</p> <p>13 ammunition at the scene of the 13th of August?</p> <p>14 MAJOR-GENERAL MPEMBE: Chairperson, when</p> <p>15 the scene was attended there were members that said yes, we</p> <p>16 did use the live ammunition in self-defence. But at the</p> <p>17 same as the question also indicated, no officer did order</p> <p>18 the utilisation of the live ammunition.</p> <p>19 MS MASEVHE: So General, according to</p> <p>20 what you have witnessed, when did the police use live</p> <p>21 ammunition? Was it before or after the attack on the</p> <p>22 police?</p> <p>23 MAJOR-GENERAL MPEMBE: Chairperson, I did</p> <p>24 testify that the police were attacked. The attack was</p> <p>25 unlawful. The attack was imminent, and in that process</p>	<p style="text-align: right;">Page 12278</p> <p>1 said that that's the time when they utilised the</p> <p>2 ammunition.</p> <p>3 COMMISSIONER HEMRAJ: When you say the</p> <p>4 members said they utilised the ammunition, is this</p> <p>5 something that was told to you subsequent to the event?</p> <p>6 MAJOR-GENERAL MPEMBE: Correct,</p> <p>7 Chairperson.</p> <p>8 COMMISSIONER HEMRAJ: Now at the time, at</p> <p>9 the time of the actual event, are you able to say when live</p> <p>10 ammunition was used?</p> <p>11 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>12 CHAIRPERSON: - I asked the question was,</p> <p>13 as appears from slides 57 and 58 of exhibit L, there were</p> <p>14 quite a number of shell casings found on the scene</p> <p>15 afterwards, and 98 sharp-point bullets were fired, and 56</p> <p>16 non-lethal ones. So there was, a fair amount of ammunition</p> <p>17 was fired at the scene.</p> <p>18 MS MASEVHE: Chairperson, you asked a</p> <p>19 question and I presume that the witness now has to answer</p> <p>20 what you have asked in relation to exhibit L.</p> <p>21 CHAIRPERSON: You heard what I said. I</p> <p>22 pointed out that if you look at exhibit L, particularly</p> <p>23 slide 58 that is being shown now on the screen, you will</p> <p>24 see that 64 9mm bullets were fired, and 34 5.56mm bullets,</p> <p>25 a total of 98, not to mention the 56 non-lethal items as</p>
<p style="text-align: right;">Page 12277</p> <p>1 those members that utilised the live ammunition, one could</p> <p>2 ever say yes, they utilised the live ammunition in self-</p> <p>3 defence.</p> <p>4 COMMISSIONER HEMRAJ: I don't think</p> <p>5 you've answered the question though. She wants to know</p> <p>6 whether the police used live ammunition before or after the</p> <p>7 attack. Do you know that? Can you say?</p> <p>8 CHAIRPERSON: Perhaps the question should</p> <p>9 be rephrased. It should be before or after or during,</p> <p>10 because if the, depending on the length of time during</p> <p>11 which the attack took place, it may be that some live</p> <p>12 ammunition was fired while the attack was taking place, so</p> <p>13 the real question is was live ammunition used before the</p> <p>14 attack commenced, or was it after the attack was over, or</p> <p>15 was it during the attack?</p> <p>16 MAJOR-GENERAL MPEMBE: Chairperson, live</p> <p>17 ammunition was used while the attack was imminent.</p> <p>18 CHAIRPERSON: How long did the attack</p> <p>19 take – the attack, it was, I take it, a series of attacks</p> <p>20 really because it wasn't just one single attack. How long</p> <p>21 did the attacks take place? Over what period?</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>23 could not count, but what I saw is that when immediately</p> <p>24 the protesters came rushing to the police, and particularly</p> <p>25 when the chopping was taking place, then the members also</p>	<p style="text-align: right;">Page 12279</p> <p>1 well. So a fair amount of ammunition was expended. Over</p> <p>2 what period did that take place? We see that six POP</p> <p>3 people fired, six TRT people, three NIU people, so you</p> <p>4 know, did the engagement – if one can call it that – did</p> <p>5 that extend over several minutes?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>7 could not check the time, but it was quick and the</p> <p>8 ammunition that were used during that attack.</p> <p>9 MS MASEVHE: General, I would like to</p> <p>10 refer you back to the very same statement of Mr Booie, that</p> <p>11 is paragraph 34 of this statement, and wherein he states</p> <p>12 that – are you on –</p> <p>13 MAJOR-GENERAL MPEMBE: Yes, correct,</p> <p>14 Chairperson.</p> <p>15 MS MASEVHE: - yes, wherein he states</p> <p>16 that, "I reiterate that we were a very small group that</p> <p>17 posed no threat whatsoever either to the police or any</p> <p>18 other person. The shooting which sparked the violence was</p> <p>19 completely unnecessary and all the deaths should</p> <p>20 accordingly be laid squarely at the door of the SAPS." Now</p> <p>21 General, you hear what he says. What is your comment on</p> <p>22 this, particularly the fact that they didn't pose any</p> <p>23 threat and that the shooting by the police sparked the</p> <p>24 attack?</p> <p>25 MR NGALWANA: Chair, just for the record,</p>

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1 that is one example of a factual account that we would want  
2 to cross-examine this witness on.

3 CHAIRPERSON: She's not putting it as a  
4 fact. She's saying this is an allegation that's been made  
5 by someone, who may or may not come and give evidence, who  
6 may be called by counsel for the arrested strikers, if he  
7 comes back, or he may be called by the evidence leaders if  
8 he doesn't, but this witness is in the box now and she's  
9 not putting it as a fact; she's simply asking for his  
10 comment. So I don't think there's anything wrong with  
11 that, so you can carry on.

12 MS MASEVHE: Thank you, Chairperson.  
13 General, would you be able to answer the question?

14 MAJOR-GENERAL MPEMBE: Chairperson, I did  
15 indicate that on that day the total number of the  
16 protesters who were armed with dangerous weapons were  
17 between 100 to 200.

18 CHAIRPERSON: The thrust of what is being  
19 put – or sorry, I must rephrase it. The thrust of what's  
20 been said in the statement upon which you were asked to  
21 comment is that even though they may have had dangerous  
22 weapons, they were proceeding towards the koppie, posing no  
23 threat whatever to the police or any other person, and that  
24 if the shooting by the police hadn't taken place the deaths  
25 wouldn't have occurred. That's what is said here in

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1 paragraph 34. Now do you agree with that statement or  
2 would you disagree with it?

3 MAJOR-GENERAL MPEMBE: I totally disagree  
4 with it, Chairperson, and my reasons are as follows. I  
5 went personally as a senior officer to speak to the  
6 protesters. They vehemently refused to hand over the  
7 dangerous weapons to the police. If they did not pose any  
8 threat, why they could not hand over the dangerous weapons  
9 to the police? Chairperson, in any country any sensible  
10 law-abiding citizen when requested by a General in the  
11 police to hand over the weapons, he could comply with the  
12 instruction. The fact that they refused to hand over  
13 weapons, Chairperson, I have a strong belief that they  
14 already had an intention to attack the police because if  
15 they did hand over the weapons they did not have any weapon  
16 to attack or to use it to attack the police.

17 Secondly, I made sure that they understand what  
18 I'm saying, Chairperson, and I said to them we are not  
19 going to arrest you. The only thing that we want, because  
20 you are so angry, we want the dangerous weapons, and the  
21 reason that NUM was there to attack them is not correct,  
22 Chairperson. The police were there to protect everybody,  
23 not only the protesters or any other person. Secondly to  
24 say that they were defending themselves against the NUM is  
25 not correct because the NUM was not there, the attack was

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1 not imminent from the NUM and only the police were there.  
2 Chairperson, whether it is correct that the  
3 shooting sparked violence, which I totally also disagree,  
4 we have utilised teargas in all other operations where we  
5 disperse people; the people never attacked the police in  
6 the manner that the police were attacked on that day. In  
7 terms of the experience that I have, it was the first time  
8 that when the teargas is used, as they claim, then they  
9 attacked the police.

10 CHAIRPERSON: Did they start attacking  
11 the police before or after the stun grenade, the first stun  
12 grenade was fired?

13 MAJOR-GENERAL MPEMBE: Chairperson, as it  
14 could have been seen there at the video, the movements of  
15 the other protesters you could not see clearly, but others  
16 they reacted because of the teargas, and others said that  
17 they reacted because of the stun grenade, so their reasons  
18 are different. But what I'm saying is that –

19 CHAIRPERSON: The question I asked you  
20 was did any attack take place by the strikers before the  
21 stun grenade, the first stun grenade was fired?

22 MAJOR-GENERAL MPEMBE: No, Chairperson.

23 CHAIRPERSON: Now when a stun grenade is  
24 fired there are two reports normally, aren't there? There  
25 are two, like explosions. Is that right? Is that correct?

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1 When a stun grenade is fired, one hears two reports. Is  
2 that right? Two explosions.

3 MAJOR-GENERAL MPEMBE: Oh, yes,  
4 Chairperson.

5 CHAIRPERSON: And a person who wasn't  
6 familiar with the stun grenade, would such a person  
7 possibly think that live ammunition, sharp ammunition was  
8 being used?

9 MAJOR-GENERAL MPEMBE: It is correct,  
10 Chairperson, but the usual reaction will be that you run  
11 away from the explosion, but not to attack the police.

12 MS MASEVHE: Now finally, General, I  
13 would like to refer you to the statement of Mr Xolani  
14 Nzuza, it's a witness statement. It has been circulated  
15 amongst all the parties, and I would like to refer you to  
16 page 3, paragraph 10 thereof.

17 CHAIRPERSON: Before we do that, I think  
18 in the interest of good housekeeping we should mark this  
19 exhibit with an exhibit number, and so Ms Pillay still  
20 remembers her skills from over a month ago; can she tell us  
21 what the next exhibit number is?

22 [15:24] MS PILLAY: Chair, it would be exhibit  
23 HHH21.

24 CHAIRPERSON: Thank you. The witness  
25 statement of Xolani Nzuza has been marked exhibit HHH21.

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1 Thank you.

2 MS MASEVHE: Thank you, Chair –

3 CHAIRPERSON: Now you're being referred

4 to that statement. You have a copy, have you, Major-

5 General?

6 MAJOR-GENERAL MPEMBE: Correct,

7 Chairperson.

8 CHAIRPERSON: What's the paragraph

9 number?

10 MS MASEVHE: It's paragraph 10 on page 3.

11 CHAIRPERSON: Thank you.

12 MS MASEVHE: General, I would like to –

13 MAJOR-GENERAL MPEMBE: I'm sorry,

14 Chairperson, just also maybe before we leave from this

15 point, it's also that even the witness here indicated that

16 they requested the police to accompany them to the koppie,

17 and secondly I did indicate that in terms of the Regulation

18 of Gatherings Act, section 9(1), the police could escort

19 them to ensure that – that I wanted just to add to my

20 answers.

21 CHAIRPERSON: Yes, you've added that to

22 your answers now. Yes, please proceed with the cross-

23 examination.

24 MS MASEVHE: Thank you, Chairperson. Mr

25 Nzuzi here, General, states that, "All of a sudden the

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1 police released teargas into the crowd, followed by stun

2 grenades and live ammunition from the ground and from a

3 helicopter. There was pandemonium with strikers running

4 away mainly in the direction of the koppie. Some of the

5 policemen were among the fleeing crowd and there were

6 violent encounters with the strikers. I saw one of the

7 workers collapsing in front of me and realised that he had

8 been shot by the police fire." Now General, I would like

9 you to comment on this because he again makes an allegation

10 of shooting by the police, and the teargas and the stun

11 grenades that were released by the police from the

12 helicopters.

13 MAJOR-GENERAL MPEMBE: Chairperson, I can

14 only say that it is only the teargas, the stun grenade that

15 were used, not live ammunition. The live ammunition was

16 only used in self-defence and the reasons that I've given

17 with the previous statement are the same.

18 MS MASEVHE: Thank you. Chairperson,

19 thank you; that will be all of our questions. Thank you.

20 CHAIRPERSON: Yes, my colleague Adv

21 Hemraj wishes to ask you some questions on this point.

22 COMMISSIONER HEMRAJ: Just for some

23 clarity, General, exactly what was it that you saw as

24 regards Warrant-Officer Monene, you say he was about 15

25 metres away to your left. Do I understand that he was

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1 slightly in front of you as well?

2 MAJOR-GENERAL MPEMBE: As I indicated

3 before, he was on the, not in front but on the left-hand

4 side, but I could see what was happening there.

5 COMMISSIONER HEMRAJ: And the protesters,

6 the body of protesters were in front of Warrant-Officer

7 Monene?

8 MAJOR-GENERAL MPEMBE: Correct,

9 Chairperson.

10 COMMISSIONER HEMRAJ: When the stun

11 grenade and the teargas was fired, did that area, did the

12 gas permeate that area, the smoke?

13 MAJOR-GENERAL MPEMBE: It was also

14 covered with the smoke.

15 COMMISSIONER HEMRAJ: So when you say you

16 saw the protesters run towards the police, was there smoke

17 in that area as well?

18 MAJOR-GENERAL MPEMBE: Correct,

19 Chairperson.

20 COMMISSIONER HEMRAJ: And at the time of

21 the actual attack on Warrant-Officer Monene, could you see

22 the actual attack, or could you just see a lot of people

23 around the police? I'd just like to know exactly what it

24 is that you saw.

25 MAJOR-GENERAL MPEMBE: I saw the actual

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1 attack with a number of people coming to Warrant-Officer

2 Monene.

3 COMMISSIONER HEMRAJ: You actually saw

4 him being struck by different people?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 COMMISSIONER HEMRAJ: Yes, thank you.

8 MAJOR-GENERAL MPEMBE: Maybe I might also

9 add that the reasons for the death will assist, or maybe

10 corroborate what I'm saying.

11 CHAIRPERSON: Yes, thank you, General.

12 Mr Gumbi, are you ready now to commence your cross-

13 examination? I know you haven't given all the documents

14 yet –

15 MR GUMBI: Yes.

16 CHAIRPERSON: - given notice of all the

17 documents, but –

18 MR GUMBI: Yes, Chairperson.

19 CHAIRPERSON: - perhaps you can make some

20 progress before 4 o'clock when we adjourn?

21 MR GUMBI: Yes, Chairperson, I was – it's

22 my submission in fact that I've just distributed my index

23 of all the document I will rely on my cross-examination of

24 General Mpeembe. I think there are more than 30 –

25 CHAIRPERSON: Yes, but the reason, you

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1 see the reason for our requirement that notice be given  
2 beforehand is that it enables the witness to read the  
3 documents before being cross-examined.  
4 MR GUMBI: Yes.  
5 CHAIRPERSON: Of course it enables us to  
6 prepare as well.  
7 MR GUMBI: Yes.  
8 CHAIRPERSON: And it prevents cross-  
9 examination by ambush, which is not something we encourage.  
10 MR GUMBI: Yes, Chairperson.  
11 CHAIRPERSON: So if you can start your  
12 cross-examination now in a way which doesn't take undue  
13 advantage of the witness, if there's for example a document  
14 that you want to refer to which the witness hasn't had an  
15 opportunity to read – he may well have read them, but if he  
16 hasn't had the opportunity to read a particular document  
17 you're referring to, then perhaps we can give him an  
18 opportunity to do so, but please begin, make as much  
19 progress as you can.  
20 MR GUMBI: Chairperson, it's my  
21 submission, because all these documents, quite a number of  
22 documents I've referred to, I don't think the witness is in  
23 possession of those documents. For effectiveness of my  
24 cross-examination I think it will be better if the witness  
25 is in possession of all the documents I've indicated in my

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1 index –  
2 CHAIRPERSON: Does that mean you're  
3 effectively asking for your cross-examination to continue  
4 tomorrow morning?  
5 MR GUMBI: Yes, Chairperson.  
6 CHAIRPERSON: And we should postpone at  
7 this stage?  
8 MR GUMBI: Yes, Chairperson, for sake of  
9 the witness to have all the documents.  
10 CHAIRPERSON: Yes, in the circumstances  
11 we will adjourn then until 9 o'clock tomorrow morning.  
12 MR GUMBI: Thanks.  
13 CHAIRPERSON: We'd like the statements,  
14 please, as well. I don't know if you've given it to the  
15 evidence leaders, so we'd also like to prepare, so not only  
16 the General, but also we can have the opportunity this  
17 evening of reading the documents. We'll adjourn now and  
18 the matter will resume tomorrow morning at 9 o'clock.  
19 [COMMISSION ADJOURNED]  
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