

COMMISSION OF INQUIRY INTO THE RIOTS AT
SOWETO AND OTHER PLACES IN SOUTH AFRICA.

CAPE TOWN

WHOLE SESSION

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THE COMMISSION RESUMES ON 17TH JUNE 1977.

GEORGE NDESI STILL UNDER OATH:

MR NGO: Mr Ndesi, I happen to know that you are a very well-known person in Nyanga and one of the leaders in the township, and you know the lay-out of Nyanga very well? -- That is correct.

The single bachelors who are near the church in Fourth Avenue are on the lefthand side and your residence and the married quarters are on the righthand side. Isn't that so? -- If one faces Bellville then the residents are on the righthand side. (10)

That is quite right. I am putting that to you because I am facing Bellville. Not so? -- That is so.

Now, here is a clash of two groups, the residents and the single quarters. Now let me put it to you, how do you in the first instance - these two groups come together - what would you - how would you separate them, two fighting groups coming together, others are living in a group here on the left-hand side and the others are living in a group on the righthand side. These two forces come together. Now you want to separate them. What would be the first thing you would suggest? -- (20)
As far as I am concerned the separator would stand inbetween the two parties.

With you there, and I take it to tell the one group to stand back and the other group to stand back. Wouldn't that be the logical thing to do? -- That is quite correct.

Now there is - where would you stand, having that in mind, now where would you stand in that area, Emms Drive, Swelitsia Drive or anywhere else? -- I would stand in Swelitsia Drive.

So that is according to your reply - Swelitsia Drive would be sort of the boundary you would put? -- I would not (30)
draw a line, but I say if I were to separate these two parties then/..

then I would stand in Swelitsia Drive.

I don't know whether you are drawing a line, drawing a line physically. You agree that you would stand in Swelitsia Drive and tell the other group : "Now, you get onto your side, on the lefthand side and you get onto your side, on the righthand side", in Swelitsia Drive, is that correct? -- I would stand in Swelitsia Drive, right in the middle of the road and tell each side to go back.

So you are with me, we all agree, myself, yourself, Mpetha and the police, that Swelitsia Drive would have been (10) the natural area where you would have told the other group to be on the lefthand side and the other group on the righthand side. Thank you. -- The police did in fact tell each side that if one from the other side crosses onto the wrong side then there would be some trouble. As far as I am concerned this line of cross-examination is different altogether from my views.

All I wanted to establish is the fact that Mr Ndesi in one of his opinions, the first one is that the police failed and should not have made Swelitsia the boundary, and I only (20) wanted to establish that he, what would he have done. He agrees with me and with the police and with Mr Mpetha that Swelitsia happens to be the natural boundary, because the single quarters as we all saw, we have got the single quarters on the lefthand side and we have got the married quarters on the righthand side. It is natural, here is Swelitsia Drive in the middle. He also admits that he would have stood in Swelitsia Drive. That is all I wanted to know whether he would have stood in Swelitsia Drive. -- We don't regard Swelitsia Drive as a line of demarcation. They called it the line of demarcation. (30)

MR MALHERBE: Could I just ask you this one question, please?

We/...

We are dealing with now - only you want to confine yourself and your evidence to the occurrences on the 25th and 26th of December. Now, on those days there were two opposing factions, there were the residents and the youth on the one side and the migrants on the other side, and already the youth did not listen to you, they crossed over onto the migrants' side and the migrants stand back and a migrant was killed by the youth, which, as you say ... (intervenes) -- I must just dispute that point before you cross-examine. -- The reason why I interject is that the - one of the migrants fell on the children's (10) side of the road, not that the children crossed over to the migrants' side.

Alright. But the fact was that at that stage the migrants, one of them had already been killed. -- On that particular day the children had not crossed the line... (intervenes)

Forget about crossing the line. The point is this, that there was fighting between the children and the migrants and a migrant had got killed. That is the point.

INTERPRETER: The witness - I had not finished conveying this. The witness says on that day the migrants crossed onto the (20) children's side and there was a clash and as a result of that one of the migrants was killed by the children on the children's side.

Right. And that, if I remember his evidence correctly made the migrants very cross. -- That is possible.

Right. -- They must have got cross.

Now, what I want to know from the witness is this: If the police on that day had stayed away from Nyanga completely, had not got near Nyanga that day, what would the position have been between the opposing factions? -- In my opinion, basing (30) my opinion on the peace that was made, if the police had not been there and the peace was made as it was in fact made, then there/...

there would not have been any trouble, because a man was killed, he was conveyed away from the spot, and the peace was made thereafter.

But Mr Ndesi, please, the peace was made as a direct result and intervention by the police. I mean, please, you know, my difficulty is that you must stick to the facts, the facts that the police, they were instrumental in bringing the people there, they did not want to come without the police bringing them there. -- If they in fact wanted peace there would not have been such a lot of people killed. (10)

CHAIRMAN: Who wanted peace? -- The police came over to us and told us that the migrants wanted to make peace. Then we got together and agreed that peace should be made.

MR MALHERBE: And peace was made? -- Yes.

And the peace was broken by the youth who came from Guguletu, unbeknown to the police, to cause trouble. -- Yes, it is possible that nobody knew that the Guguletu children were coming over. Anyway the police tried their best and drove these Guguletu people away. Then thereafter there was an attack and people were killed. Shot and killed by the police, assaulted physically by the police. (20)

MR SONN: On that point do you remember that in your statement you say on the 26th the police should have sent the youth from Guguletu home and thus prevented the big fight that happened that day. Now, just now you have said that the police had actually sent those children back and here you say they should have sent them. What are we to believe? -- The Guguletu children came over to Nyanga and when they came that sparked off the trouble again, because it was then that the Nyanga children, including now the Guguletu children, crossed over onto the migrants' side, and there was a clash. And the police intervened/.. (30)

intervened and turned the Guguletu children back to Guguletu, and we were ordered to go back to our houses with our children, which then we did, and once we were going back to our houses, with the Guguletu children having been turned away by the police, there was some more trouble, and people were then killed.

Actually what you are saying now is you say, in your statement you say that the police did not turn that children away and that is your objection, and actually now you say the police did send the children back. -- What did I say about the Guguletu children in my statement?

(10)

You say "the police should have sent". You say: "In my opinion the police failed in the following respects." Then you go on to say in (b) - we leave (a) alone, (a) has been dealt with. In (b) you say: "The police should have sent the youth from Guguletu home and thus prevented the big fight that happened" and now you have just told us that the police did send the children home, the Guguletu children home. Here you object and now you say the police actually did the thing you said they failed to do. Alright, the point is established.

MR MALHERBE: Could I just ask you a last question. If I look at your statement and listen to your evidence, you seem to be of the opinion that the police have a rôle to play in making peace and keeping peace and had a rôle to play on that day, but in your opinion they did not do it properly. Is that a fair summary of your evidence? -- That is exactly the gist of my evidence.

(20)

Right. Now, therefore you do not agree with Mr Mpetha, who says the police has no rôle to play and should stay away from occasions like the happenings on the 25th and 26th of December. -- In my opinion I do say that the police do perform their duties in the proper way, but on those two

(30)

particular/...

particular days they neglected that.

Mr Mpetha in evidence said that on occasions like that it is better if the police does not come there at all. Now, does he agree with that or does he not agree with it? -- That is his own opinion.

And you don't agree with that? -- In my opinion, in my own opinion I say that the police neglected their duty, on those two days.

Alright. -- That is his own opinion.

Right.

(10)

CHAIRMAN: Do you have anything further?

MR ZINN: I have one question, sir. Mr Ndesi, had the police not been on Swelitsia Drive on that morning when peace was made, judging by the attitude of the migrants and your attitude, do you think peace could possibly have been made that morning between the two sides? -- In my opinion there would not have been any trouble had the police not been there and drawn a line.

No, my point is, would peace have been made in the absence of the police that morning? -- If the police were not there, if the police had not drawn a line, peace would have been made. (20)

I have no further questions.

CHAIRMAN: Who would have brought the migrants in the van over to the other side to make peace with you? -- Committee members would have worked.

MR MALHERBE: But you could not control your side and your people, you told them to stay on their side, and they did not want to. You could not control your people. After the police made peace, you still could not control the people. The migrants did not want to come to you, because the people had already been killed. The police had to bring them. Now are you/... (30)

you really seriously suggesting and are you departing from your statement that you did not suggest - did you suggest to the migrants that peace should be made? The suggestion came from the police. "I was told by the police that the migrants wanted to have peace." Before the police came, did you make any peace move? How can you say so, Mr Ndesi, are you sure? -- Firstly, I did not say that the crowd, the children side were uncontrollable. I said ...(intervenes)

I want him to stop there. He said in his statement "the youth were warned by the older residents to keep away from the border, but they did not listen and stones were thrown by both sides. Eventually the migrants crossed the road and a fight started". He could not control it. I mean he must stick to facts, please, Mr Ndesi. -- The children did not cross the line that Saturday. There was swearing between the two parties and the stone-throwing. Then the migrants crossed the line onto the residents' side. Then there was a clash, and one of the migrants was then felled, killed. (10)

The police were not there? -- The police were not there then. (20)

Right. Now, you tell me what positive steps you, being an elder of your community, your community took, your side took to make peace or send peace feelers to the migrants to arrange peace.

CHAIRMAN: Before the police came.

MR MALHERBE: Before the police came. -- We did nothing that night because this person had already been killed and had not been removed.

So no steps were taken by you without the aid of the police to try and make peace? -- The police told us that the migrants wanted to make peace, and then we made peace. (30)

Right/...

Right. And the peace was broken by your side? Not by the police, by your side. -- Peace was broken up by the arrival of the Guguletu children who were later on turned back.

It was started off by the Guguletu children who aroused - your words "who aroused our youth" with the result that more fighting started. -- I agree, that is quite correct. There was a clash after the Guguletu children had come. The children had then crossed onto the bachelors' side and there was a clash and that was stopped by the police and the Guguletu children were turned away. (10)

Thank you.

MR NGO: Just one question. If at that juncture the police had not intervened, what would have happened? -- There would have been a fight. The arrival of the police helped.

So it will be right to say that the presence of the police was helpful? -- The arrival of the police at that particular moment was of help, but it was useless again thereafter.

CHAIRMAN: Then the witness may go, thank you.

NO FURTHER QUESTIONS.

MR ZINN: I call my next witness, Charlton Mtshwanti. Mr (20)
Commissioner, before Mr Mtshwanti is sworn in, I would just like to express my personal unhappiness that I have about these statements, the statements that were handed in to the Commission by myself.

CHAIRMAN: Yes.

MR ZINN: I think my reservations about the statements were made yesterday to the Commission. I did not possibly make myself perfectly clear, but at this stage I would like to say that these statements were not made by me with the intention or with the foreknowledge that they were to be handed in to (30)
the Commission, and I feel unhappy that...(Chairman intervenes).

CHAIRMAN/....

CHAIRMAN: Sorry, do I understand that you say that you did not take these statements as statements to be handed in to the Commission?

MR ZINN: No, we did not, and I feel unhappy. As far as I am concerned this gives the gist of the evidence. Most of the witnesses that I have led I feel that they have been able to tell their story without too much prompting from me, too much leading from me, and therefore I have merely got the gist of what they have to say, and I feel unhappy where to any great extent if they deviate from these statements it is held against (10) them. I feel unhappy about that. The Commission of course would make up its own mind on that point.

CHAIRMAN: What - either this is a summary of what they say or it is not.

MR ZINN: Yes. They were taken in circumstances which I made clear to the Court, to the Commission yesterday.

CHAIRMAN: That is right, but now if they deviate from it completely(intervenes)

MR ZINN: Oh, completely it won't be.

CHAIRMAN: That is right, and if they then depose to facts which (20) are at complete variance with the facts deposed to in the statements, surely one can then put that to the witnesses with the greatest respect .

MR ZINN: Certainly, sir.

CHAIRMAN: If you can indicate any occasion where any one of this Commission used a statement in any other way, I would be very pleased. That is not our intention.

MR ZINN: I could give one example.

CHAIRMAN: Yes.

MR ZINN: In the statement of Ndesi, paragraph 5(b), I (30) sketched to the Commission yesterday through Mr Ndesi, the circumstances/...

circumstances under which this and all my statements were taken.

CHAIRMAN: Yes.

MR ZINN: If you read the statement, 5 (b): "On the 26th the police should have sent the youths from Guguletu home" and if the word "earlier" is put in, then the objection raised by your colleague on the Commission, would then fall away. Now, under the circumstances in which I personally took the statement, it is perfectly possible that I might have had the word "earlier" and I left the word "earlier" out.

CHAIRMAN: Yes. Mr Zinn, on that particular - I am pleased (10) that you are now on this particular matter. In this particular matter your own witness deposed that the police did not see these youths come. That is his evidence. So that in fact it could not have been earlier, because on his own evidence they did not know they were - they could not see them coming. Really, I mean, what I am concerned about is the fact that witnesses - obviously each one of us have our own feelings, but I mean I think that one should try and not let our feelings run away with us. You follow; I think that one should try and get back to what happened that day, and to bring them back (20) to the written word is one way of keeping this within manageable boundaries.

MR ZINN: Certainly. I accept that. There is one other aspect, sir, and that is that unless I am mistaken copies of my statements have gone beyond the immediate members of this Commission. Unfortunately the secretary of the Commission does not appear to be here.

CHAIRMAN: Which means gone where?

MR ZINN: Gone to people other than the immediate members of the commission. I understand that there are members of the (30) police force here and - unless I am mistaken, they have had sight or use of my statements. And I have ...(intervenes)

CHAIRMAN/...

CHAIRMAN: I have no doubt that in the Commission's efforts and in instructing the Commission's legal team to investigate and find out whether it would be possible to have evidence, either to confirm or deny statements that have been made, it is possible, quite possible that the police may have been asked about it.

MR ZINN: I see. Thank you, sir.

CHAIRMAN: I don't know that it has been done, but ... (intervenes) (10)

MR ZINN: I merely wanted clarification, that is alright, thank you.

CHARLTON NTSHWANTI: DULY SWORN, STATES (THROUGH INTERPRETER)

MR ZINN: You are Charlton Ntshwanti, is that correct? -- Yes.

Would you tell us where you live, what your family position is and what work you do? -- I stay in Swelitsia, E 1279. I am employed at Tygerberg Hospital, I earn R146,36 per month.

I see, thank you. Which particular avenue do you live in? -- In Third Avenue.

And where is your house? (20)

CHAIRMAN: May I just ask? It would appear from statements and from matters that I have seen as if some people refer to the particular area of Nyanga where they live as Swelitsia.

MR ZINN: Yes.

CHAIRMAN: They don't live in Swelitsia Drive?

MR ZINN: Not the drive.

CHAIRMAN: They do refer to that area apparently sometimes as ... (intervenes)

MR ZINN: I gathered that, sir.

CHAIRMAN: I think this is the second time we have had it from (30) a witness. The last time I thought it was just a ... (intervenes)

MR/...

MR ZINN: It seems to be a suburb, as it were.

CHAIRMAN: Yes.

MR ZINN: I guess it is a site in the location at the moment.

CHAIRMAN: No...(inaudible). He said he lives in Third Avenue, is that correct? -- Yes, in Third Avenue.

I would imagine that is more or less the area that the bus drove around there?

MR ZINN: Yes, unfortunately I was not present, but I think this is wheremost of the action that we are hearing about took place.

(10)

CHAIRMAN: That is right. The distinct part is called the Mau-Mau part?

MR ZINN: Yes, that is the sub-suburb.

CHAIRMAN: And the distinct part would be the quarters of the migrants.

MR ZINN: The migrants, yes.

CHAIRMAN: As we call them, but it would appear as if that area or the area where most of the fighting was is frequently referred to by people who live there as Swelitsia, that they live in Swelitsia. My adviser, Mr Ngo, says that to his knowledge that is so. So that if a witness should say that then I think we all know, so that you need not, you know - as long as we know the street that he lives in, we know that that is more or less the area.

(20)

MR ZINN: Thank you. I would like to pinpoint his house actually, which is in line with his statement. Is your house near a corner and if so, what corner? -- My house is situated at the corner of Swelitsia Drive and Mohabi Drive.

I see. Could you remember the 26th of December 1976? -- I do.

(30)

CHAIRMAN: I should tell you that according to the plan we have got/...

got those two streets run parallel.

MR ZINN: The statement says - we have an unfortunate state of affairs, the statement says the one thing and the witness says another. I think in this case the statement is correct.

(Laughter) If I may proceed a little bit further, possibly I can come back to that point when he is more relaxed. I think he is a bit nervous at this stage.

CHAIRMAN: Yes.

MR ZINN: Now, do you remember the 26th of December at about 11 o'clock in the morning, and you were at home. Now, could you tell us what happened? -- I was seated in my house and I heard a noise. (10)

What did you then do? -- I went out and I was informed that there was a fight.

What did you do then? -- I walked towards Sixth Avenue.

Will you tell us your story, please? -- I then saw the migrants standing on one side of the road near Mr Siboya's shop, with the residents on the location side of the road.

How could you identify the migrants? -- They had white cloths on their heads and were dressed in white sheets also. (20)

Did any of them have things in their hands? -- Yes, they were armed.

With what? -- Irons, axes, bayonets.

And then what happened? -- Whilst we stood there a person called out and said: "There comes the police".

When you were standing there, was there fighting between the migrants - before the police arrived, was there fighting between the migrants and the residents? -- There was no actual clash on my arrival, but they were facing one another. In my opinion they were about to fight. (30)

I see. Then the police arrived, you say? -- Yes.

And/...

And then what happened? -- And then we turned and ran towards the direction from which I came from.

Why did you do that? -- Because the police drove up to us and wanted to shoot at us. (The witness made the demonstration with his hands). The police wanted to shoot, and we were in a hurry.

I see. The police were in other words pointing firearms. Did they have firearms and were they pointing them? -- The demonstration I showed indicates the manner in which the police held the guns. (10)

Were the guns pointed at the residents only or were there guns pointed to other people, to the migrants as well? -- Guns were pointed towards the residents of the location.

CHAIRMAN: I wonder if you could just stand up and demonstrate so that we can see properly how they had the firearms? -- Yes, I will demonstrate.

Held it against the shoulder, against the shoulder or not? -- This demonstration shows that the police held the guns with the butt up against the chest or shoulder.

So that the gun was more or less level? -- The guns (20) were carried in the manner I showed, straight and level.

MR NGO: At that moment where were you standing, where were the residents? On which side were the residents? -- The residents were in the middle of the road.

CHAIRMAN: What road is that? Is that Sixth Avenue? -- That was on a Sunday. The residents were then in the middle of the road, Sixth Avenue.

MR ZINN: Could you give us any indication of how many migrants there were at this stage and how many residents, in the area that you could see? -- There were very many people on either (30) side. So I cannot give an estimate.

Did/...

Did you hear the police say anything to the migrants or say anything to the residents? -- I heard nothing said by the police.

I see. So you then turned tail and went in the opposite direction. -- Yes.

Before you turned, did you see the migrants and the police doing anything together? -- I noticed two police vehicles parked near Mr Siboya's shop.

Yes? -- I made my own inferences and I thought that they must have been talking about something. (10)

Did they seem to be speaking? -- Yes.

Did you hear what they said? -- No, I was too far to hear.

I see. So what did you then do? -- My attention was drawn to the group of police who were coming along and it was said they were going to shoot, so we turned and ran away.

When you say we ran away, did all the residents run away, or just a few of them or just a group with you? -- All the residents ran away.

And then what happened? -- Just when I entered a certain house, I was shot by the police and I fell inside that house, as a result of the bullet. (20)

Where were you shot? -- Shot on my righthand side, near the knee.

With what were you shot? Do you know? -- I was shot with a pellet gun.

With a pellet gun. I see, so it was not ... (intervenes)

CHAIRMAN: I would imagine it was probably bird shot.

MR ZINN: Yes, that is the way I understood it. I just want to clear that up, in the light of the word bullet he used earlier on. (30)

CHAIRMAN: I think you can ask him.

MR/...

MR ZINN: Was it bird shot? Do you know bird shot? -- I do.

Have you seen other people shot in the township with bird shot? -- Just repeat that question.

Have you seen other people with wounds like yours? -- No.

And after that you went home and slept, is that correct?

-- Yes.

On the next day, that is on the Monday, can you tell us what happened? -- On Monday I saw the bachelors near my house.

At what time was this? -- Between 7 and 8 in the morning.

CHAIRMAN: It was still dark, was it? -- Yes. (10

MR ZINN: It was dark? -- Yes.

But isn't it light at 7 o'clock in December? -- We had not waken up yet.

I see. Now, do you know where Mohabi Drive is? -- I do.

Is it near or far from you? -- Mohabi Drive is near my place.

Can you describe where it is? -- Mohabi Drive cuts just about above my house.

I see. So your house is in Third Avenue, is that correct?

-- Yes. (20

And Mohabi Drive is nearby, is that correct? -- Yes.

I see. And you are not far from that? -- Yes.

Fine. Now, what did you see on that morning when you got up? What made you get up early? -- Firstly, it is a double question - firstly, I was awakened by a noise.

Noise, yes. -- Having waken up, I saw the migrants.

Where were they? Where were the migrants? -- They were near my house, just outside the wash place.

What were they doing? -- They were walking slowly towards my house. (30

In what manner were they walking? Did they look friendly?

-- They/...

-- They were not in a friendly mood and they were armed with irons.

Were there only migrants or did you see other people amongst them? -- These were migrants only.

Did you see any policemen during that time? -- Just as I came out of my house through the front door, I saw a policeman.

What was he doing, what did he say? -- I saw a policeman who was then inside the police van. This policeman said we must go back into the houses or else he would shoot us.

What did you then do? -- I then went back into my house. (10)

What did you observe? Did you look out of the windows of your house? -- Having entered my house, I looked through the window and I saw the bachelors still near the wash place.

Did you at any stage - did you have any difficulty getting back to your house? -- No.

What did you observe from your house? -- I said I saw these bachelors still standing near the wash place.

What were they doing? -- They were standing, walking towards my place.

Did they reach your house? -- No. (20)

And did you observe anything more that day, or did you stay in your house all the time? -- I saw nothing else.

I have no further questions, thank you.

DR YUTAR: My Lord, in the light of the fuller facts surrounding the incidents of those days elicited from the last witness and the previous witness, I do not propose to put any questions to this witness, except on two points.

CHAIRMAN: It did appear to me as if the first encounter happened in Sixth Avenue, whereas the evidence of the witness before this one was more centred on Third Avenue. (30)

MR ZINN: According to this witness.

DR/...

DR YUTAR: According to this witness, but I will be covering all that with the police evidence fully, My Lord.

CHAIRMAN: Yes.

DR YUTAR: Mr Ntshwanti, just two things. You said you had no difficulty going home. I am referring now to the event of Monday, the 27th. -- I experienced no difficulty.

Though in your statement you say "I thereafter ran to the bushes as I could not go home as there were migrants around my house". -- We had been ordered by the police to go back to the houses which we did, but of my own, having spotted the migrants still near the wash place, I thought it was best for me to go out and I went out and ran to the bushes. (10)

So you went to your house and then you went out of the house? -- Yes.

CHAIRMAN: And afterwards you went to Guguletu, is that right? -- From the bushes I ran over to Guguletu, yes.

DR YUTAR: And then you were asked while in your house did you see anything and you said no. Is that right? -- No, I said whilst inside my house I looked through the window and then I saw the single men near the wash place. (20)

Saw the? -- The migrants.

Oh, yes. What were they doing? -- They were standing there and I drew the impression, the conclusion that they were coming towards my house.

But you did not see them do anything? -- Yes, I did not see them actually coming along, but I saw them standing and I drew my own conclusion in that they would come towards my house.

Did you see them do anything? -- That point is quite clear. I did not see them move. I saw them standing.

Yes? -- And I concluded of my own that they would come towards my house. Then I went out. (30)

I/...

I wonder how this got into your statement: "The people who refused to go into their houses were shot by the police and hacked by the migrants. -- I know nothing about that portion of my evidence read out from my statement.

MR ZINN: I have got no further questions, thank you, sir.

CHAIRMAN: Yes, thank you, the witness will be excused.

NO FURTHER QUESTIONS.

MR ZINN: I call my next witness, Mr Commissioner, Francina Ntsenyeho.

THE COMMISSION ADJOURNS.

(10)

THE COMMISSION RESUMES.

FRANCINA NTSENYEHO: DULY SWORN, STATES (THROUGH INTERPRETER)

MR ZINN: You are Francina Ntsenyeho? And you reside at No. 1711, Nyanga, that is in Sixth Avenue, is that correct? -- Yes.

You are a housewife, you live there with your husband and seven children? -- Yes.

Now, could you tell us please where you were roundabout midday on the 26th of December 1976, that is Boxing Day? -- I was in my house.

(20)

Did you go out at all that day? -- Yes, I did.

Where did you go to? -- I was in my yard.

I see, and what did you see from your yard? -- I saw men who wore white cloths on their heads.

What did you see them doing? -- I saw them standing across the street and soon thereafter I noticed a police van pulling up at the spot where these men were standing.

In which street was this? -- They stood just across on the other side of Sixth Avenue.

Were there residents in the area as well, when you were outside? -- Yes, there were.

(30)

And/...

And what did you then observe? -- After the police van had pulled up at the spot where these men were standing, it drove off again from there and came over to the location side. By that I mean where the location people were standing.

Yes? -- The police then addressed the crowd as a whole and said that they had spoken to the migrants and they had made peace. So we must go back to our houses. I at once went back to my house.

And then what happened? You saw the policemen coming across, yes? -- Having gone back to my house I was in there (10 for some time when my husband ran in running away from somewhere, I don't know. I look through the window as a result of a report made by my husband, and I then saw the migrants outside the house, throwing stones at the house.

Yes? What did you then do? -- They threw a petrol bomb. I came out of the house and I addressed them, telling them that I was not fighting with them, but they assaulted me.

Then what happened? -- I was felled by these men and I heard one of them say "we have finished it". They then walked away. While still lying outside there having been (20 felled by these men I saw my husband come out of the house. He was also attacked. I do not know what happened to him. On noticing that these men had left the area, I crawled back to my house. Whilst in my house I felt weak as a result of the assault on me. I sent a child to the shopkeeper to go and ask the shopkeeper to try and contact the ambulance and send it to my house. Soon after this child went out of my house, I thought again that this child might be injured. With that I got up and walked to the shop.

What is the name of the shopkeeper? -- Mr. Nthethe. (30

Right. -- When I got to his shop, he told me that his telephone/...

telephone was out of order. The migrants must have spotted me going to this shop, because they came over to the shop and told the owner of the shop to bring me out of the shop. I asked him to protect me and he said he was afraid of the migrants who might set the shop alight. I must please go out. Now, I did not of my own go out, but the owner of the shop pulled me out of the shop. I was then assaulted by the migrants there, again. Whilst these people were assaulting me outside the shop this time, I saw a police van approaching the place. I thought to myself that I would be saved. Instead of stopping (10 the police van drove past this place where I was being attacked. I heard one of the occupants of that van saying: "Maak haar dood". I do not know whether that was referred to me. Soon after the police van had passed the spot, these men took out a table knife and threatened to cut my throat with it, but I saw him looking at the others and I then ran to the office where I got some assistance. An ambulance was summoned to this place.

Now a couple of questions, Mrs. Ntsenyeho. The first question is: While you were being assaulted outside this shop Mr Nthethe's shop, were there any other residents being (20 assaulted or did you see any other residents there? -- No, I did not see any other residents being assaulted at that stage.

Could this remark have referred to anyone other than yourself in the area in your opinion? The remark made by the policeman? -- As I say I do not know whether the remark referred to me or not, but I was being assaulted by these men.

Now, you mentioned that you saw the police van - I think you said two police vans earlier that morning when the migrants were lining up in Sixth Avenue, driving. In which direction were they driving? After their discussion with the migrants, (30 did you see what happened? Sorry, it is a long question. I

will/...

will put it differently. You saw the policemen talking to the migrants, I think. -- Yes, they did.

Now, after this discussion, what happened? What did the police do? -- Because we were outside our houses at that stage, but still inside the yard, the police came over to us and addressed us.

Did you see the migrants moving in any direction while you were in your yard? -- The migrants remained at the spot where they had been when talking to the police, and the police came over to us. (10)

I see. You then went into your house, is that correct? -- Having been ordered so, I did.

No further questions, thank you, sir.

DR YUTAR: My Lord, for the same reasons that I advanced with regard to the last witness, I do not propose to cross-examine or question this witness, just on one or two aspects of her evidence. How old are your children? -- The eldest was born in 1957 and the youngest born in 1967.

So they are aged between nine and nineteen, if my arithmetic is correct. Boys or girls? -- Four boys and three girls. (20)

Do you know whether any of these children of yours took part in the rioting, in the marching? -- I will say that none of my children were there, because the two elderly boys were not in Cape Town at that stage. They had been in ... (inaudible)

And the other five? -- The other five were with me here in Cape Town.

Could they have joined the other children outside? -- No, my children never joined any other group. They were there with me throughout. (30)

Now, you say the migrants followed your husband another man/...

man into your house? -- No, I did not say that, but what I said was this that after having entered my house, my husband came in into the house, rushing, followed by another man and they made a report to me. As a result of that report I looked through the window and I saw something outside.

Well, then I will just read to you what your statement says. "I went straight home with one of my daughters. Shortly thereafter I saw my husband coming into the house with another man. They were followed shortly by some migrants. I went outside and spoke to these men who were after my husband." (10)
Is that correct? -- That is correct, because I said in my evidence that after my husband had come in and made a report, I went out and spoke to the migrants and told them that we are not fighting.

Now, you don't of course know what your husband ...
(intervenes) -- It was then that they assaulted me.

You of course don't know what your husband and/or this other man did outside before they came into your house? -- That is quite correct. I did not know nor see what my husband and the other man had done. (20)

I have no further questions.

MR ZINN: I have no further questions, thank you, sir.

CHAIRMAN: Thank you very much. You may go.

NO FURTHER QUESTIONS.

MR ZINN: I call next, Mr Commissioner, Patience Mputing.

PATIENCE MPUTING: DULY SWORN, STATES (THROUGH INTERPRETER)

MR ZINN: Mrs Mputing, you live at M 1712, Swelitsia, Nyanga, that is in Sixth Avenue, is that correct? -- That is correct.

Now, on the 26th of December 1976, you were walking with two of your children from Fifth Avenue to your home, is that correct? -- Yes. (30)

About/...

About what time of day was this? -- It was some time in the afternoon. I do not know what the time was.

Early afternoon or late afternoon, can you remember? -- It was late in the afternoon.

You - can you describe the scene for us? Were there residents in the area? -- There were residents about.

And were there migrants? -- Yes.

How could you identify them as migrants? -- Migrants were dressed in white gowns.

Were there police in the area? -- Yes.

(10)

And what was happening? Can you tell us what you saw? What were these two groups doing? -- I saw the police come over to our side.

Your side of what? -- In the location.

Where had they been and where were the migrants? -- I first saw these people, the police and the migrants walking along the street.

Which street? -- In Sixth Avenue.

Who was in front? -- The police were in front.

And who were behind them? -- The migrants were behind them. (20)

Did the migrants have anything in their hands? -- Yes.

What? -- Armed with axes and bayonets.

How many policemen were there? -- There were many of them.

And migrants, how many of them? -- Many also.

And whereabouts was this that you saw this happening? -- My house is near the street. These people were right on the road.

What did you then do? -- As I was walking with the children, I ran into the house.

Did you hear any shots being fired? -- As I entered the house I noticed the police give a sign to the migrants to

(30)

come/...

come along.

What sign was this? -- They beckoned with their hands.

Where were you when you saw this? -- I was in one of my rooms inside, and I looked through the window and saw it.

What else did you see from your window? -- The police fired shots there in the avenue with the migrants behind them.

What was the purpose of the police firing the shots do you think? -- The police firing shots there in the location and we ran to the house.

Now, did you see from your window any assault taking (10) place? -- Whilst looking through the window I noticed someone from my nextdoor being assaulted there outside and he later fell outside the gate.

Was he killed? -- He was felled and killed by the migrants.

I see, and then there was an assault upon your house, is that correct? -- Yes.

As a result of which you lost certain - the loss of your furniture, your house was burnt and your sister sustained injuries? -- Yes.

I have no further questions, thank you, sir. (20)

DR YUTAR: I will, for the same reasons, My Lord, not be examining her in detail. What time did you make this statement? At least what time are you referring to on the 26th of December, what time of day? -- I saw these thing on a certain Sunday afternoon in December.

Yes, what time? -- I do not know what the time was. It was some time in the afternoon.

Yes, because an awful lot of things happened that afternoon. A lot of children were attacking the migrants. You didn't see that? -- Yes, I saw the stone-throwing by the children on (30) migrants.

On/...

On the migrants, alright. Now, to whom did you make this statement? I am only asking because the print is different. -- I made my statement to a certain Mr Nhumha.

Who is he? -- Mr Nhumha is a man who went about taking statements and I also made a statement to the advocate seated here now in Court. The gentleman.

Well, we will leave him out of the picture and I am interested in this man who went about taking statements. At whose request did he go about taking statements? -- The man's name is Nhumha. (10)

Yes, you have told me that. And on whose behalf was he taking statements? -- I do not know, I never questioned him.

Does he belong to the Nyanga Residents Action Committee? -- I do not know, I never asked him that.

And how did you know he was collecting statements? -- He questioned me together with my sister, there in the house.

You understood him? -- He told us he was taking statements from the injured people.

What signs did you see the police make? -- They beckoned with their hands. (20)

How? -- The migrants were behind them, and the police made signs as I now demonstrate (demonstrates).

Beckoning the migrants. Did you understand that the migrants should ...(intervenes) .. --- Who were behind. Beckoning them to come along.

In other words you are suggesting that that sign indicated that they were inciting the migrants to go into the attack? -- Yes, that is the impression I gained, because at that time when these signs were made by the police, the migrants were coming rushing behind the police, running towards us. (30)

That is a very serious allegation to make against the
police/...

police, isn't it? -- I agree.

And if there is any truth in it, of course the police deserve to be censured for it. -- Quite.

There is not a word about it in your statement. How did you come to leave out such an important aspect of what you saw that day? -- I cannot explain it came about that that point does not appear in my statement, because I mentioned it to Mr Nhumha who obtained the statement from me.

He must have been very thrilled to hear that from you and if he was collecting statements, I cannot imagine him leaving it out. (10)

MR ZINN: I must object to that, ...(inaudible) .. being sarcastic.

DR YUTAR: I am not being sarcastic and don't accuse me of it.

CHAIRMAN: Perhaps you could have put it somewhat differently, as to why he should have left this out.

DR YUTAR: Counsel on this side apparently, My Lord, are at one to accused me of sarcasm where no sarcasm is intended.

CHAIRMAN: Yes, well, I think we can leave that. Perhaps the question can be put to her as to whether she can give any explanation as to why he should have left out an important point. (20)

DR YUTAR: Can you give any reason why this gentleman should have left out that sentence? -- I told him everything as far as I am concerned. I do not know why he omitted that.

This man that was killed who was it? -- I do not know. This man came out from nextdoor.

A migrant or a resident? -- He came from the location side, not from the migrants.

And you saw him being killed? -- Yes. (30)

By? -- By the migrants.

How? -- He was attacked, also chopped. His head was chopped with an axe.

A terrible thing? -- It certainly is.

That too does not appear in your statement.

MR ZINN: It does. "I saw in front of our door migrants attacking a man with axes and killing him."

DR YUTAR: I beg your pardon. I am sorry; "attacking a man with axes and killing him." I am sorry, that does appear.

Were you assaulted? -- Yes.

How? -- I was struck on my left arm with a piece of iron that had a knob on the end, and as a result of the attack on me I fractured my left arm. I also sustained an injury on my left leg. (10)

Attacked by whom? -- By one of the migrants.

Did you recognise him? -- If I see him yes.

In fact did you see him that day? -- Yes, I saw him that day and I told him personally whilst we were still waiting for the ambulance to pick us up that I know he caused the injuries I sustained.

What did he reply? -- He gave no reply. He used a term which I did not know what it meant, saying that they had been 'culaing' with us. I do not know what that means. (20)

Did you report this attack on you by your assailant whom you knew or could identify to the police? -- I went and saw Reverend Russell about this and he said I must be certain of this man's address. Then I can go and lodge a complaint.

Did you go to the police at all? -- No.

Did you tell Reverend Russell what you told the Court now? -- Not all.

Why not? -- He instructed me to try and get the address of this person and come back again. (30)

Did/...

Did you? -- No, I did not.

Did you make a statement to Reverend Russell? -- No.

You did not. And to this day you have not reported the matter to the police? -- That is correct, I never reported this to the police.

No further questions.

MR ZINN: Mr Commissioner, there has up till now been quite a lot of misunderstanding about statements, I am afraid, and to make things quite clear to this Commission, I should like to hand in a note that I personally made on the 21st of March (10) 1977 from this witness. I had received a copy of the statement which is presently before the Commission which I felt needed some expanding. My note which I will read to the Court and thereafter hand in, reads as follows: "Patience Mputing, additions to her statement, Sunday the 26th of December. I saw them with white handkerchiefs and white sheets. They attacked my house in the afternoon. I saw the riot police in a lane near my house shooting at people. The riot police were in front with the migrants at the back. I saw the riot police beckon to the migrants to come on and follow them. (20) The man was crossing from one house to the other side. I cannot explain the fight, I don't know what the reason was for the fight..." and then certain details about the injuries that she sustained. I should like to hand this in.

CHAIRMAN: Do you know the identity of this man?

MR ZINN: I do not know. I do not. I was handed this statement, this statement about the occurrence on the 26th of December by the Action Committee.

CHAIRMAN: By the Action Committee?

MR ZINN: Yes. (30)

DR YUTAR: Well, it will go in as EXHIBIT 463.

MR/...

MR ZINN: Now, if I may?

CHAIRMAN: Yes.

MR ZINN: Ask a couple of questions. Mrs Mputing, as a result of the assault upon you you have been, I understand, badly injured, is that correct? -- Correct.

And you have also lost a large number of your possessions, is that correct? -- Yes.

And this was caused directly by a migrant worker, is that correct? -- Yes.

At the time that you made this statement, this typed (10) statement, I don't know whether you have seen it, what seemed to you to be the most important thing to tell the person who took the statement? -- What was important to me at that stage I made the statement was the question of the injuries I sustained and the goods I lost.

No further questions, thank you, sir.

MR MALHERBE: Mrs Mputing, you can't put a time to this, the time that you saw the police beckoning the migrants to attack? -- I cannot tell the exact time, other than merely saying that it was some time in the afternoon. (20)

Now, your house, is that on Sixth Avenue? Or is it in one of these lanes that run out of Sixth Avenue? -- My house is in Sixth Avenue.

And between your house and Sixth Avenue, are there bushes? -- On the other side of Sixth Avenue mere grass, no bushes.

But there were no trees? -- On the one side is the bachelors' quarters.

Now between her house, along her fence, between her house and Sixth Avenue, are there any shrubs or bushes or trees? -- The house is in the middle, shops on one side and the houses (30) on the other side.

No/...

No, she does not follow me. I understood her to say that her house is on Sixth Avenue. -- Yes.

Now, between her house and the road, I take it there is some sort of fence or hedge. -- All that there is is the wire fence, that is between my house and the street itself.

And there is nothing there on that fence or along the fence or on the neighbours' houses which would prevent her from seeing up and down the street? -- From my house we see clearly right across the street as far as the shops. There is nothing to obstruct one's view from my house. (10)

And from your bedroom as well? -- From my bedroom as well. There is no obstruction whatsoever.

Now, the point that interests me is the police beckoning. Did that occur before the man came in, the migrant came in and hit her with this iron bar or whatever it is? -- What happened first was the beckoning by the police for the migrants to follow and secondly I was then assaulted.

Now, the police were all in Sixth Avenue? -- I cannot say that all the police were in Sixth Avenue, because they were firing shots and were moving about. (20)

Were there at that time, Mrs Mputing, is it your impression that the police were in Sixth Avenue and mixed with the police were migrants? -- These people worked hand in hand in that the police walked ahead, shooting, followed by the migrants who destroyed the properties by setting them alight.

You see, that seems to be - that is my difficulty because that seems to be the impression that you are under that that must be so. -- This is not what I think but it is a fact that I saw.

But now Sixth Avenue is not a very wide street. -- I agree, I don't regard Sixth Avenue as a very wide street. (30)

Alright/...

Alright. Now you are trying to create the impression that the police walked in front from the migrants' side of the road across Sixth Avenue towards your house, and then the migrants followed. -- Yes, that is a fact. They crossed from the migrants' side, from the other side of Sixth Avenue.

Now it is not a wide street. -- They crossed from the other side of the street, followed by the migrants, but they were not in a group, they were scattered all about. The point is they in fact crossed it, onto the residents' side.

And then they were standing on the residents' side and (10)
you say whilst standing on the residents' side they beckoned to the migrants to come across, pass them where they were standing in front of the residents' houses and attack the houses and harm the people inside. Is that what you say? -- Firstly the police were on the residents' side of Sixth Avenue. At the time they beckoned the migrants to follow them. Now, the migrants came along as they were beckoned by the police to come along, crossed Sixth Avenue, joined the police, but did not pass them.

They did not pass the police? -- No. (20)

But then if they did not pass the police, how did they get into her house? -- After the migrants joined the police then there was firing by the police towards the residents, and then the migrants followed.

Now, Mrs Mputing, Nyanga is not a very big place? -- Correct.

Now a few hours earlier that morning roundabout 10.30, I think, eleven o'clock, the police in fact on Swelitsia were instrumental in arranging peace between the migrants on the one side and the residents on the other side. Do you know of that? -- Yes, I saw that. (30)

You saw them. Now, don't you think it is strange that

the/...

the police would try and arrange such a peace and then in the afternoon encourage the migrants to attack the residents? -- That is exactly what surprised us, because they had tried to make peace earlier that day and then the same day in the afternoon there they come now with the migrants, urging the migrants to attack the residents.

How many migrants were there at the time of your attack?

-- There were many of them.

How many police were there? -- There were also many police.

How do you mean many? Ten, twenty, thirty, forty, fifty?(10)

-- There were shots fired outside and now and again we would look through the windows. So I never counted how many police were there and how many migrants were there.

So in fact she did not look through the window all the time? -- My sister was in the diningroom inside the house at the stage when we noticed the police, that is the soldiers (the witness uses the term soldiers) and walking with the migrants throwing stones. We would just try and evade the stones and again look through the window, to see what is happening.

The witness has not answered my question. She deposed (20) as far as I can recall that through her bedroom window she saw the police beckoning the migrants and encouraging them to attack the residents. -- Yes, that is my.... (intervenes)

Now she says that she only looked through her bedroom window now and again when she saw shots, when she heard commotion. -- It is only natural that we would not stand there at the window and look because they were busy with stone-throwing.

That is right. So that is it possible that there were some shots or there was a commotion or there was a firebomb (30) or something which caused or which drew the attention of a policeman who/...

who then, as she looked when this thing happened, he could have beckoned and did beckon one of his men to follow him to assist him? -- When the police beckoned the migrants were behind them coming and running.

Yes, the migrants might have been behind them, but I mean couldn't the police have beckoned - couldn't the police have beckoned one of their co-policemen, fellow-policemen? -- At the time the police beckoned the migrants were not too far from them.

That might be so, but I am asking you is it not possible (10) that the policeman did not beckon the migrants but he beckoned to his fellow-police? -- That I do not know. All I say is that I saw the police beckon and the migrants running towards the police.

I see, alright. Thank you.

CHAIRMAN: Where had you been to that afternoon? -- I had been to my friend.

Where? -- Somewhere in Swelitsia.

Was it quiet in Swelitsia when you came out there? -- There was a confusion already when I left my friend's house. (20)

Could this have happened, could this incident have happened as late as about nine o'clock in the evening? -- I do not know.

Could it have been as early as quarter past two? -- The assault on me?

Yes? -- All I say is that it took place in the afternoon.

Did you have lunch that afternoon? -- No, not at all.

You knew that there was a great deal of unrest in the area in which you live and the area in which your friend lived? -- I knew that. (30)

Normally under those circumstances you would not take your daughter/...

daughter or was it daughters out to a friend if there was unrest and rioting in the area. -- These children I refer to are still very young. One is 13 years of age and the other is nine years. The children accompanied me to my friend's place.

Doesn't that make it all the more dangerous to take them out when there is unrest in the area? -- I just paid a visit to my friend. There was nothing funny about it.

No, I am not asking you whether there was anything funny, I want to know whether it was not in your opinion dangerous (10) to take two such young children with you on a walk in the streets where there was unrest? -- There was an unrest that time in the location, I agree, but the migrants had not come to our side of the location at that stage. I was in fact concerned about the disturbances, that is why I decided to take the children with me rather than leaving them alone behind in the house.

Has there been evidence about what happened during that day?

DR YUTAR: There has been from Major Mouton. (20)

CHAIRMAN: Well, you see, I don't know whose evidence it is, but the extract that I have shows events on the morning of the 26th at a quarter to two, at a quarter past two and then nothing in Nyanga again until 9.10 that night.

DR YUTAR: Until 15h45.

CHAIRMAN: That was in Guguletu.

DR YUTAR: Yes, but actually I will be calling Lieutenant Visser, Lieutenant Jordaan who will speak on 10 incidents that took place which are not in Major Mouton's recital of the events. They will speak, My Lord, of events that took place from (30) 2.15 till 3.30.

CHAIRMAN/...

CHAIRMAN: What about the events - weren't there certain events at 10.30 that morning?

DR YUTAR: 10,30, yes.

CHAIRMAN: That was the peace incident.

DR YUTAR: That is right. Lieutenant Visser will be speaking on that. 10.30 and then nothing till 12.40.

CHAIRMAN: Anything after the lunch hour?

DR YUTAR: I will give Your Lordship the times. Lieutenant Visser will speak on events, on the following in addition to what Major Mouton says: 2.15 in the morning, 10.30, 12.40, (10) 12.45, 12.50, 1.15, 1.20. And then Lieutenant Jordaan will take over the story and give account of what took place at 1.45 in the afternoon, 3.10 and an important event at 3.30. All at Nyanga.

CHAIRMAN: Can you give me the locality of those in the afternoon, that is at 3.10 and 3.30?

DR YUTAR: 3.10 is Lieutenant Jordaan. I can give it to you. 3.10, Jordaan speaks of that, that is Sihlanu Road, Nyanga at 5th Avenue.

CHAIRMAN: Is that Fifth Avenue? (20)

DR YUTAR: That is Fifth Avenue.

CHAIRMAN: Yes?

DR YUTAR: And the event at 3.30, that is when the 5 000 Black people got together, it is, I think I made it clear in my questioning, took place between Mohabi, in the vicinity of Mohabi Street, Sithathuweg, Sineweg, Sihlanuweg, Sithandatuweg and Swelitsia and Emms Avenue. That is the whole area.

CHAIRMAN: Thank you. Where does this friend of yours live?
-- The friend lives in Swelitsia.

How far away from you in Swelitsia? -- Just a few houses (30) inbetween.

Between/...

Between your house and her house? -- Yes.

MR NGO: She lives in Fifth Avenue? -- Sixth Avenue.

CHAIRMAN: Now, was it necessary for you to come along either Swelitsia or Sixth Avenue to - from her house to your house, or could you walk amongst the houses? -- I came through the small passages inbetween the houses.

How long could it have taken you to walk this distance? A few minutes? -- That must have taken me very few minutes. The place is not far.

Did you ever come right into either Swelitsia or right (10) into Sixth Avenue? -- I live in Sixth Avenue.

Now, you - did you come right into Sixth Avenue, because you live on the residents' side, not on the migrants' side? -- I was not in the street itself, but right from my friend's house I came to my house.

And the disturbance you saw or rather you noticed that people showed signs of unrest, was that in Swelitsia Drive -- I was in the passages which run between my house and my friend's house when I noticed the disturbance.

Did I understand you correctly, the police had come (20) across Sixth Avenue and they beckoned to the migrants to follow them across Sixth Avenue? -- Yes.

Finally, I think I have got the area now, but can you give the Commission any idea as to about the time that it had occurred? -- I am sorry, I cannot assist the Commission on that aspect.

Thank you.

MR MALHERBE: But you were taken for treatment after your injury, not so? -- Yes.

Can't you work it back from that? Can't you - when did (30) you arrive at the hospital or the clinic? -- I had no watch,

so/...

so I cannot tell the time.

You see, Mrs Mputing, our difficulty is this, the Commission's difficulty and you can't help him with it, is that on the evidence that we have got no-one can point to any unusual disturbance in Sixth Avenue at that time, more or less at the time that you refer to. So it would assist us materially if we could get a more exact time from you. -- I am sorry I cannot help.

CHAIRMAN: Can you remember you put out the fire at your house before you were taken to hospital? -- I beg your pardon, sir. (10)

I am sorry. Do you remember having put out the fire with the assistance of your sister, I think it was? -- I was injured. The fire was put out by the children.

While you were sitting, waiting for the ambulance, can you remember, did you have a long time to wait? -- Yes, we waited for a long time, for the ambulance to come.

Is it at that time that the man that attacked you came past again? -- Yes.

You could still see him, or was it too dark for you to see him? -- It was light enough for me to recognise him. (20)

MR MALHERBE: This could not have happened before lunch, before twelve, in the late morning? -- As I say we did not have a watch in the house, I do not know.

CHAIRMAN: You did not have the radio on? -- Because of the disturbances we did not play the wireless.

Yes, thank you. She may go.

NO FURTHER QUESTIONS.

THE COMMISSION ADJOURNS FOR LUNCH.

THE/...

THE COMMISSION RESUMES.

MR ZINN: Mr Commissioner, at this stage I should like to withdraw temporarily from the Commission. My colleague, Mr Potash, has certain evidence that he wants to lead today, which for various reasons has to be led today. I will stand down and he will lead the following witnesses. Thank you, sir.

MR POTASH: Mr Commissioner, the name is A.C. Potash and my first witness is Mr Damane.

ZEPHANIA SONGEZILI DAMANE: DULY SWORN, STATES (THROUGH INTER-
PRETER) (10)

DR YUTAR: I have to protest about the way the attorneys are conducting it. We have arranged an order of witnesses. I am now at this moment not even informed that there was going to be a change of order. I have prepared myself to deal with the witnesses of Mr Zinn, and now suddenly I am taken completely by surprise to be told that he is not leading his remaining witnesses now and somebody else is taking over. It does inconvenience me greatly, and I wish they would let me know of any change of arrangements.

CHAIRMAN: Yes, I think I must ask them just to let the legal team know so that they can know where they are. (20)

MR POTASH: Sorry. Mr Commissioner, with regard to the leading of witnesses and the order, I wish to apologise for any inconvenience or confusion, but the order was arranged on Monday morning, and we anticipated we would have finished with all the witnesses by Thursday. There is still quite a few witnesses to be led. Now, for example, the witnesses that I am going to lead we thought would be led on Wednesday morning. Mr van Graan has to a certain extent been informed and unfortunately we were not aware that it was necessary to inform anybody else, but I will convey Dr Yutar's concern to/... (30)

to my colleagues.

CHAIRMAN: Yes.

MR POTASH: Thank you.

CHAIRMAN: Are you calling ...?

MR POTASH: I am calling Mr Damane and then Mr Mutlane. Sorry, Mr Commissioner, Mr van Graan has asked me just to point out that he had to phone me this morning to be here at 2 o'clock. Very sorry, Mr Commissioner.

CHAIRMAN: Yes.

MR POTASH: In fairness to Mr van Graan we did not put (10)
the order to him, and I don't want there to be any misunderstanding. It is not that we informed Mr van Graan that this would now be the revised order, and if there has been any mistake, I apologise.

CHAIRMAN: Yes.

MR POTASH: Mr Damane, would you tell the Commission your name, where you live, your age and your occupation, please? -- My name is Zephania Damane, residing at D 857, Nyanga. My business is that of a dairy business, I sell milk.

And you are 56 years of age? -- 56. (20)

Thank you. Now, Mr Damane, could you tell the Commission what happened to you on the morning of Monday, the 27th of December? -- Yes. On my way to the dairy on that date, the 27th, Monday, the 27th of December, when nearing the dairy itself, I came across a little boy and I had a chat with him.

Sorry, could you just indicate to the Commission where your dairy is? Mr Commissioner, at this stage, it is not the dairy that was pointed out, I think in Third Avenue. It is another dairy.

CHAIRMAN: Oh yes. -- My dairy is off Emms Drive. (30)

MR POTASH: Thank you, yes? -- While still talking to this
little/...

little boy, I saw members of the riot squad approaching from the direction of Sixth Avenue, and they entered Emms Drive.

Yes? -- When they went out of sight from me, I heard gun shots fired. On hearing these shots I took refuge on the other side of one of the houses nearby.

Did you go into the house? -- No, but I was just outside the house.

And then? -- Whilst still next to this house I saw one riot squad vehicle driving past. It drove past the dairy. Soon after this van drove past the dairy, I saw three men (10) running and coming from the same direction as the riotsquad then did. When these three men got in front of the dairy, they just passed the dairy a short distance and I noticed that they beckon with their hands to some other people from behind.

CHAIRMAN: These men, did you recognize them, did you know who they were? -- I did not recognize them, but they were from the single quarters.

Yes, you say they beckoned to men behind them? -- Yes. On seeing this beckoning by these three men, I anticipated that some more trouble was coming, some more migrants were (20) coming. I then ran away from the spot where I had taken refuge, through the lane between the dairy and the other house. The three who had beckoned the others from behind must have spotted me because they surrounded me in that lane. With that I turned back and opened the dairy.

MR POTASH: Did you manage to go inside? -- Whilst busy opening the latch I heard a voice from behind saying : "Here he is". Just at that moment the three men came upon me and assaulted me. I then ran away. I ran away from that dairy and whilst so running I saw the riot squad in front (30) of me and the members of the riot squad stopped me. I beg
your/...

your pardon, the people who cut me from the front whilst running away from the dairy were the same men who had chased me away from the dairy. This is the three men, not the members of the riot squad who were still ahead of me.

CHAIRMAN: Just a minute. You saw the riot squad ahead of you. You were running in their direction? -- Yes.

The three who had assaulted you then cut you off? -- Yes.

Yes? -- -- I then ran towards the small gate leading into the church building. I was then cut again by the third group now.

(10)

MR POTASH: Yes? -- I then had nowhere to run, instead I made for the wire fence. I tried to climb over the fence but I could not. These men were then on me. I faced them and they assaulted me.

Did you fall to the ground? -- I was felled as a result of the blows inflicted by these men.

Did you lose your consciousness at all? -- Yes.

And when did you next regain yourself, where were you? -- Soon after the attack someone came along and called out my name.

And then what happened, Mr Damane? -- I faintly heard this person say: "Pick him up, put him on my shoulder that I carry him away and try and get a motor car for him".

(20)

And after that? -- I do not know what happened then, from that stage when they picked me up.

And then when you came to eventually, were you in hospital? -- Yes, on a Tuesday.

On the Tuesday. And how long did you stay in hospital for, Mr Damane? -- Altogether I was detained in hospital for 15 days.

Now, the mark that you have just above your left eye, was that as a result of this assault? -- Yes.

(30)

And/...

And I understand you are going to have another operation next week in connection with that injury. -- That is correct. I cannot sleep on my lefthand side.

Now, Mr Damane, these people who assaulted you, were they wearing anything distinctive? -- They had white cloths on their heads and had some kind of blankets on their bodies.

And did they have any weapons? -- Yes, they were armed with irons, axes and sticks.

When they assaulted you, the last time, was it near the police van? -- Yes. (10)

And could the police see you or were there houses in the way? -- The police could see me. There was nothing to obscure it.

Thank you.

DR YUTAR: Mr Damane, this statement that you were led on, when did you make it? I am sorry, Mr Damane, when did you make that statement, this short one that you were led from? -- I don't know the date.

What month? -- I don't know either, anyway it is after I had got better. (20)

Was it this month, last month? -- It could be the month before last, I don't know.

The month before last. -- I do not know the date.

And to whom did you make the statement? -- I made it to one "Pickup" at the offices of the attorney who has been examining me.

And obviously there is a mistake in the second line, it is not 8 p.m., it should be 8 a.m., shouldn't it? I want to make quite certain that it was in the morning and not in the evening. In the morning, 8 o'clock in the morning? -- It (30) was in the morning.

And/...

And let me say to you quite clearly, Mr Damane, I am terribly sorry about the injuries that were inflicted on you by the migrants, but I think you will agree that that was a morning where there was a terrific clash between the migrants and the residents. -- I heard that there was some fighting in Swelitsia but there was no fighting in that particular area where I was.

And Lieutenant Jordaan will tell the Commission that there was a crowd of a 1 000 Black people of both factions. -- I did not see many people there in the vicinity of the dairy that day. (10)

And he will tell the Commission to use his words "Daar was 'n hewige geveg tussen die twee faksies? -- I personally was in the vicinity of the dairy and I was going to the dairy and there were not many people in that vicinity at that stage.

"En verskeie huise was weer aan die brand". Did you see houses burning? -- Along Emms Drive where my dairy is situated there is not a single house that got alight.

And he tells the Commission that so heavy was the fighting between the two factions that they fired no fewer than 120 shots. -- This particular van I mentioned in my evidence-in-chief which drove past the dairy fired some shots. There were no people in that vicinity. (20)

Now, if I recollect correctly, His Lordship asked you whether you can identify the assailants. I don't know whether I am correct, My Lord. Do you know who your assailant was? -- I only recognized one of my attackers.

Do you know him by name? -- His name is Michael.

And did you point him out? Did you tell the police about it? -- Yes, I did tell the police about it. (30)

And did you - did the police ask you to go and point him

out/...

out? -- I was still dazed when the police came and woke me up.

Did the police take you to point him out? -- Yes.

And did you point him out? -- Yes, I did.

And was he a migrant? -- All I know is that he is a man who stayed at the bachelors' quarters.

Right. And was he arrested by the police? -- At that moment in my presence the police left him alone and took me back to my house.

Is this your signature on this document? Show it to the witness there. Is that your signature? -- Yes. (10)

Is your full name and address - and you say here: "I am a complainant in this case. On the 17th of January 1977 and at about 18h00, (that is 6 o'clock in the evening) I accompanied the police to the house in the single quarters, Nyanga East, where I identified Bantu male Michael as one of my assailants. He was then arrested." -- No, I never said he was then arrested.

I beg your pardon, I am sorry. -- I never said he was then arrested.

So this statement is wrong? -- That portion of the statement is wrong. I never said he was arrested. (20)

Alright. Now, I am going to lead evidence as to what happened to that case. But you say he was not arrested? -- Arrested by whom?

By the police. Not you, your assailant was arrested. -- I say my assailant was not arrested by the police.

They did not take him away there and then? -- I say the police left the man after I had identified him.

Now, to return to your statement from which you were led, is this correct as you have got it here: "Before I got there - (30) (that means before you got to your dairy) - I heard shots from the/...

the police? -- I saw the police who eventually went out of sight obscured by the houses and I then heard gun shots.

Mr Damane, my question is a simple one. Did you hear the shots before you got to your dairy? -- Yes.

And at what stage were you attacked by these people? -- I had been chased by these men. They eventually caught up with me at the stage when I was trying to climb over the fence.

Did they attack you before you got to your dairy? -- They tried to cut me from the front when I tried to run towards the riot squad. (10)

No, no, please answer my questions. Did they assault you before you got to the shop, to the dairy? -- No, they did not.

They did not what? -- Assault me.

When did they assault you? -- Only after I had been to the door of the dairy and had run away from there towards the other place, when I was trying to climb over the fence.

Well, this is what appears in your statement: "I leant against the building next to the dairy so I would not be shot." Is that right? -- That is right. (20)

"Three men came running by". -- That is correct.

"They passed me, saw me and turned back towards me". -- No, that is wrong.

That is wrong? "I tried to run to my dairy but they caught me first". -- They cut me from the front before I got to the dairy.

Yes, before you got to the dairy. -- They cut me from the front when I tried to cut behind the dairy and the other building.

I see. And then: "I tried to reach..." - you say they (30) were migrant workers. "I tried to reach the Methodist Church but/...

but could not." -- I said the people came from the single quarters.

"I tried to reach the Methodist Church but couldn't". -- Yes.

"And then tried to climb a high fence but couldn't". -- That is correct.

And then when you could not climb the fence, you go on to say: "And turned to face the three". -- When I slipped from the wire fence, I then turned and faced them.

So when they attacked you, you were standing and facing (10) towards your attackers? -- Yes.

That is clear. Then you say: "Others joined them and they started hitting me with sticks, axes etc.".. -- No, that does not appear in my statement.

I am reading from your statement. "They started hitting me with sticks, axes, etc." What is wrong about it? -- These were three different groups. The first one consisted of three men. The second group came to the scene at the time when I was trying to open the door, the dairy's door. I do not know how many they were. The third group is the lot that (20) cut me from the front when I made for the church entrance. I don't know how many people were in that group either.

And did they hit you with sticks and axes, etcetera? -- Yes.

With sticks and axes? -- Yes.

You say: "I fell to the ground. They nearly killed me." -- Yes.

Is this your signature on this document? -- Yes.

That statement which you made to the police in connection with the case that you laid with them, and it is dated the 14th of January 1977, I am going to read it to you: -- I (30) never made a complaint to the police.

Well/...

Well, I am going to put this in. This is your signature, and I want to put it to you that you made this statement to the police on the 14th of January 1977 and as a result of that the police took you out three days later and asked you to point out your assailant, which you did, and then he was arrested. My Lord, may I put the first statement in, although I have read it into the record? It will be EXHIBIT 464, that is the statement of the 17th of January, and the statement of the 14th of January will be EXHIBIT 465. Now listen very carefully, Mr Damane. -- Let us straighten out this point. (10)

Right. -- On the 14th of January it is not that I went and lodged a complaint with the police, but the police came to my house and they then made the statement.

Well, it is very kind of the police to have come to your house. Obviously you were badly injured. -- And I refused that the policeman should obtain a statement from me at that stage, because I was not in my full senses.

"This is a statement taken by me taken at Guguletu, 14th of January 1977 at 13h26 . Statement taken by me, and signed?" (20)

SOMEBODY ANSWERING, NOT SURE WHO IT IS: A Bantu member of the police. I am not so sure who he is, but he is on his way with the police ...(inaudible) .. this matter.

DR YUTAR: Now, I am going to get the docket and I am going to put that in. Now, do you deny that you signed this statement? -- I do not deny having signed the statement. I signed the statement while I was still lying on my back and was dazed, and did not consent to it, because I would not be able to read it, because I was dazed.

Now, subject to what you have said and I will call the (30) officer who took the statement, I propose to read it out and then/...

then you can tell us perhaps where this officer got all the information from. Your name is Zephania Damane, is that correct? -- Yes.

Bantu male, he has got here 25 years. -- Look at that, that is ridiculous, I am 56. (Laughter)

Right. He will have to explain that. You live at D 857, Nyanga East? 857 Matanzima Road, Nyanga. -- Just read that address again.

D 857? -- Yes, that is correct.

Matanzima Road, Nyanga? -- Yes.

(10)

That is correct? -- Yes.

The statement reads as follows: "I am a Bantu male residing at the above-given address and owning the Terminus Dairy, Nyanga East." Is that the name of your dairy? -- Yes.

He has got that right at any rate. And the statement goes on: "On the 27th day of December 1976 at about 8 o'clock in the morning, I was opening my dairy at Nyanga East, when a number of Bantu males called Amabaca appeared. One of them said: 'Here he is', calling his friends and they were all possessing kieries, and some other instruments which I could not be able to notice. They then attacked me, assaulted me with these kieries on my head and all over the body. I then collapsed and fell unconscious. I could remember the time ..." -- I could?

(20)

That is how it reads: "I could remember the time. Bantu male Jimmy Kula arrived." Do you know Jimmy Kula? -- I do.

"And he removed me per motor car to the charge office at Guguletu where an ambulance was phoned and I was conveyed to Groote Schuur hospital for treatment. I am sustaining one open wound on my right thigh, one on my right side of my stomach and one on my head. I can't be able to count how many cuts

I/...

I have got through this assault because the whole of my head was injured. In Groote Schuur hospital they operated me on my head and then on the 10th of January 1977 I was transferred from Groote Schuur hospital to the Conradie Hospital, where I was further treated. On Monday, the 10th of January 1977 and in the afternoon I was discharged although I am not yet alright. I can be able to identify one of my assailants. His name is Bantu male Michael of Newlands Men's Single Quarters, Nyanga. I know where he stays, I don't know the house number." Where did this police officer, the policeman (10) get all those details from? They do apply to you, don't they? -- Some of the pieces on that statement could have been made by the policeman himself.

By the policeman himself. Alright. Is this your signature on this document? -- Yes.

That is your signature. Now, let me say to you how your signature here - a certain Reverend Russell caused a document to be distributed overseas and printed and distributed by the United Nations under the title of "The rôle of South African Riot Police in burnings and killings in Nyanga, Cape Town, Christmas 1976" and purports to be a report by the Ministers' Fraternal for Langa, Guguletu and Nyanga, and in that document he gives certain details about yourself and this is a document which states inter alia: "We have received the repeated and reliable eye witnesses accounts" and inter alia he says: "We are certain that these are extremely serious assertions. However, we are fully satisfied that they are true." As a result of that document the police were asked to do an investigation and senior police officers were entrusted with this task of investigating the allegations made (20) by this Fraternal and in the course of the investigations the (30) police/...

police approached you for a statement which I now propose to read and put it in, as EXHIBIT 466.

CHAIRMAN: Does it relate to any statement in the document?

DR YUTAR: Yes, My Lord. It relates to the one on page 3 under the heading "Mr S T" and refers to "Mr D." and the police will indicate that Mr D is this Mr Damane. It is under the heading "Mr S T - police shot at people seeking to save Mr D of Nyanga." Now this statement was taken by the police on the 28th of February 1977. Now, do you admit that you made this statement to the police? -- Besides (10) the other one you wish to read out? Besides the other one which you read out?

I don't understand.

CHAIRMAN: I think you are asked about this one only?

DR YUTAR: Do you admit making this statement? -- To whom did I make that statement?

To the police.

MR POTASH: I think that is incorrect. Dr Yutar is putting to the witness that he made the statement to the police. The statement was prepared at our offices. (20)

DR YUTAR: Which one?

MR POTASH: The statement to which Dr Yutar is now referring, and it was presented by our offices to the police.

DR YUTAR: Through the good offices of the attorneys this statement was made to the police and handed to them? -- Yes.

I am going to add that because it was prepared by people other than the police we can accept that no word was put into your mouth. -- Correct.

Now I will read the statement: "I Zephania Songezili Damane of D 857 Nyanga East, wish to make the following statement". (30) There is no reference to your age, so we need not quarrel about it/...

it. "These events occurred on Monday, the 27th December 1976 at approximately 8 a.m." -- On what date?

On Monday, the 27th December. "I was standing talking to a young boy whom I know by sight about 300 yards from the dairy, which I run in Nyanga. I was on my way to the dairy to go and wash myself but did not have time to unlock my dairy. I heard shots from the direction of the bus terminus and immediately saw the riot police drive along Emms Drive and one van ..." -- Correct.

"And one van drove down the road in front of my dairy." (10)
-- Correct.

"I knew they were riot police by their dress". -- Yes.

"They were firing shots as they drove along". -- Yes.

"The other police vans continued along Emms Drive and all the police vans stopped at the back of my shop on the tarred road." -- Yes.

"Because I was afraid of being shot, I ran to unlock the Yale lock on the door of my dairy, when I saw three men following the police van by about 15 to 20 yards. These men had come from the same direction as the police vans and (20) had run past me, but on seeing me they turned back towards me. When I turned to face these three men, I heard other men behind me say "there he is", and I turned in that direction and saw a man whom I identified as Michael. I mentioned this in my statement to the Guguletu Police, who were also aware of his identity. I had previously made a sworn statement to the police when I just come from hospital and was still feeling dazed." And then next to it is your signature again. Do you want to see it before I continue? Show him please. -- If that statement went through my attorneys it must be correct. (30)

"All these men were wearing white doeks." -- White doeks?

"I/...

"I tried to escape but could not run in the direction of the old location away from the migrant workers, and I also tried to reach the Methodist Church diagonally across the road from my dairy, but without success." And listen carefully now. "I then tried to climb a 6 or 7 foot mesh fence at the end of the road but could not do so, and therefore I turned to face the migrant workers who were approaching me on three fronts. The original three approached me first and were followed by larger groups from other directions. I was pain-stricken and can therefore not give an approximation (10) of the size of the crowd surrounding me. They then started to beat me and although I had seen men armed with sticks, axes and sharp-pointed sticks I do not know with what I was assaulted. I then fell to the ground while trying to fend off the blows with my arms. At some stage during this attack I lost my glasses which were returned to me by my auntie when I came back from hospital. My watch also was broken in the attack. I could hear, although I could not longer feel the blows. I heard someone say: "Come with an axe". " You heard that? -- Yes. (20)

Did you hear perhaps anybody say "Laat hom vrek"? -- No.

"I was semi-conscious still at this stage but could feel no pain or sensation. Next, I heard a familiar voice call me by my clan-name repeatedly, attempting to rouse me. I could still see from my one eye and saw Mr Jimmy Kula leaning over me. I heard Mr Kula say "Let me take him on my back and try and get a car for him." I then lost consciousness and did not know what was happening until I gained consciousness the following day, Tuesday, in hospital." Now, wouldn't it be false to say that you were ...(intervenes) (30)

MR POTASH: My learned friend is reading from a title, he has not/...

not finished this title.

DR YUTAR: My learned friend gives me a statement and it is unsigned, but it has another paragraph which is not in the one I have got. "I was in Groote Schuur hospital for 5 days, and then I spent 10 days in Conradie hospital." By the way that appears in the statement you made to the policeman, to the Black policeman. And then another three lines which does not appear in this one you signed. "The spot where I was being assaulted was conspicuous to the police, because while I was at the fence the police could see me, so they must have seen what was happening but they did not interfere." (10) What I have just read out now does not appear in your signed statement. We are going to call this Mr S T, but as far as you are concerned is it not false to say that you were dragged from the fence, you were trying to climb and hacked about the head? -- I was not dragged from the fence, I slipped of my own.

And you turned round to face your assailants? -- Yes.

And you personally did not hear anybody say "Laat hom vrek". -- No. (20)

And in point of fact the police came to see you, as you say, took a statement, and then three days later asked you to accompany them to point out the person who assaulted you. -- I agree.

Mr Damane, now in fairness to the police, is there anything else they could have done with regard to the assault on you? -- Which policemen do you refer to now? This one who fired shots or which one?

No, I am referring to the police so far as the assault on you is concerned, the assault on you by the migrants. Is there anything more that the police could have done? -- The police/... (30)

police could have stopped my assailants.

I have no further questions.

CHAIRMAN: Did you hear shots while you were trying to climb the fence? -- No, not then, My Lord.

Mr Potash?

MR POTASH: No thank you.

MR NGO: Just one question, Mr Damane. The area where your dairy is, I agree with you there was not a single house that was burnt down. Now why do you think these bachelors came running around those quarters? It is a very quiet area as far as I know. -- Because there was nothing in that area, I do not know why. (10)

Is it possible perhaps that there was somebody who had, this Michael for instance, who had a grudge against you? -- I wouldn't know that.

When you ran, according to you, you ran towards your dairy trying to open the door, ran towards the Methodist Church, all the time, how far were the police? -- The police had stopped nearby a certain corner on the tarred road, but I cannot give an estimation of the distance. (20)

Is it the tarred road facing the school? -- Yes.

Is it possible that the police were perhaps watching the residents on the other side of the school? -- The bachelors' quarters were very far from that spot and the spot where the police vehicle was parked is right in the middle of the location.

So in front of the Whakateka School and the Liwa School, there was no trouble there, no movement of people? -- There was nothing whatsoever, as far as I am concerned.

Thank you.

CHAIRMAN: Is there anything you wish to add? (30)

MR POTASH: No thank you.

CHAIRMAN: Wasn't there a trial in this matter?

DR YUTAR: I understand - I have got the docket and I propose to read it. The Public Prosecutor has declined to prosecute. I want to go through this docket and I shall advise the position tomorrow. It has just been handed to me. I will go through it tonight and advise the Commission tomorrow morning.

CHAIRMAN: Well, yes, it will have to be on Monday.

DR YUTAR: Of course.

CHAIRMAN: Perhaps this witness must also be here when that is done. (10)

DR YUTAR: I will be in touch with Mr Potash and let you know, My Lord.

CHAIRMAN: Then subject to that, thank you very much. I hope the next operation will be successful on you. Thank you very much.

NO FURTHER QUESTIONS.

MR POTASH: Mr Commissioner, my next witness is Mr Mutlane.

NEOL LINDA MUTLANE: SWORN, STATES (THROUGH INTERPRETER)

MR POTASH: You are Mr Noel Linda Mutlane, and you reside in Nyanga. Please tell me the exact address in Nyanga? -- U.1, (20) Emms Drive, Nyanga.

You are 31 years of age and you are employed by the Old Mutual? -- Yes.

I understand that you were in your home at approximately 8 a.m. on the morning of Monday, the 27th of December 1976. -- That is correct.

Could you now briefly tell the Commission what happened at that time and the events immediately following? -- Yes. At about 8 o'clock that morning I heard a gunshot outside. I looked through the window and I saw a van, a police van, brownish (30) in colour, approaching from the direction of the terminus and

I/...

I noticed while this vehicle was still in motion there was a policeman seated on the bonnet of it and it was coming towards my house.

This van was coming down Emms Drive from which direction?
-- From the terminus direction.

Now that is from the Sixth Avenue direction or from the Second Avenue direction? -- It was coming from the direction of the terminus, not travelling along the road, but it was coming towards Emms Drive.

Please carry on. -- I heard of this vehicle, I noticed (10)
about three or four or five men running from the direction of the vehicle itself, in other words, the vehicle was behind them. When I saw this I opened the door and beckoned the police. The policeman who sat on the bonnet of the vehicle in question picked up his gun and pointed it on to my direction. With that I went inside and closed the door and locked the door from behind - from inside. The men who were running in front of the police vehicle were then not far from my house at that stage and they had white cloths on their heads. I locked the front door through which I looked and ran through the back (20) door. I went towards the location. I ran through the back door, I was right outside when I looked and these men were then on my heels. I kept on running. I ran past Mr Damane's dairy and there is a shop nearby the dairy. I then saw a police van parked on the road, on the tarred road and I also observed that there was a policeman outside the van, but behind it. On seeing this I ran straight to the direction of the police. I was running towards the direction of the police, I thought again to myself that the policeman who was outside the police van might think that I am one of the attackers. With that I changed my (30) direction and ran towards the residential place. Just before

I/...

I got to the van, immediately after I passed Mr Damane's shop I noticed that the people who chased me were no more chasing me because I did not hear their footsteps. On looking behind I saw them going towards Mr Damane himself and he was lying. I spoke to the police, in fact, I shouted at the police and asked them to help Mr Damane. Before I got to the police I heard the voice saying "Laat hom vrek". That was said by a policeman who was then talking to another man who was nearby him (the policeman). I do not know what they were talking about, but I heard this being said. At the time when I asked them to (10) try and help Mr Damane, talking in English, I of my own thought perhaps the policeman did not hear me, or did not understand me because he said "huh!" I was making for the road when I spoke to the policeman for the second time, in Afrikaans this time. I asked them that they should help Mr Damane, they are going to kill him. This policeman took out his gun and did this with his gun (indicated) saying I must pass on to the location side. (The witness indicated with his hand). At that stage I then told the policeman that if he does not want to help Mr Damane I would then take the number of his vehicle. I had (20) already noticed the number of this vehicle at that stage. I kept it in memory, also wrote it on my hand, and I was crossing the road then. I saw people attack Mr Damane. There were many of them, I cannot tell this Commission how many they were, but they attacked; they assaulted him with sticks and many weapons with which they armed themselves. This policeman walked away slowly from the van and walked along the tarred road. He took about five paces away from the van. He saw Mr Damane all the time. All of a sudden I noticed that some of Mr Damane's attackers had gone and there was only one person who remained (30) behind with him who was still assaulting him while Mr Damane was

lying/...

lying down. This policeman pointed his gun up and fired a shot and thereafter walked slowly towards Mr Damane.

This shot, where was it fired, in which direction? --
Just in the air. After firing that shot in the air the policeman walked towards Mr Damane at a very slow pace. The longer distance taken from the place where the police van was parked and the spot where he stood is quite shorter than the distance where the policeman stood up to Mr Damane. So, in other words the policeman was not very far from the van and was still far from Mr Damane. This policeman addressed me and said: "Here (10)
is your friend, go and look at him." I then walked up to Mr Damane, followed by other men. We eventually got up to Mr Damane. One of the men who accompanied me up to Mr Damane called out at Mr Damane with his clan-name. He called out more than once. I could see that Mr Damane must have heard. I then told this man and others that they should pick him up and take him to the Church where Mr Damane's van was parked, then they could take him from there with his van to the hospital. There is one point I forgot in my evidence and that is, at the time when we walked towards Mr Damane the police van had (20)
also been turned and was moving towards Mr Damane also. When I got to the spot where this policeman had been standing and the policeman himself was still standing there, I asked this policeman that he should pick him up and take him to the hospital. The policeman got inside the van and just said: "Ag" and walked away, and the van drove away. We then proceeded to Mr Damane.

While you were speaking to the policeman could you see Mr Damane? -- Yes, I could.

Was there nothing to obstruct your view? -- No, there (30)
was nothing.

And the policeman, could he also see Mr Damane clearly? --

He could see him, there was nothing to obscure his view.

And you addressed him in English and in Afrikaans? --
First in English, secondly in Afrikaans.

And when he said "Laat hom vrek" he wasn't talking to you? -- Quite. He was not talking to me.

No further questions.

CHAIRMAN: The number of the van? -- SAP 39600.

I would like information about that.

DR YUTAR: Mr Mutlane, I am going to ask His Lordship, for reasons which I will state later, to allow me to reserve my questioning of you until Monday morning, but I think we can ask a few preliminary questions now. You speak of Monday morning, the 27th December 1976? -- Yes. (10)

And I will read to you paragraph 2 as it stands here and you can tell the Commission whether it is correct. "At about 6 a.m. on the 27th December 1976, I heard a commotion outside. Pho, Vanqa and I were outside." -- No.

Is that all wrong? -- Yes, that is wrong.

"The migrants started attacking. We ran away." -- At what time? (20)

You give the time here, 6 o'clock in the morning. -- No, no, no. I never said that.

What did you say? -- That does not appear in Mr Damane's statement. It does appear of course in the other statement I made, in Mr Pho's statement. And still it does not read like that.

Well, I am just reading from a statement by Noel Linda Mutlane. Is that you? -- Yes.

And this was given to me and I can only go by what I see here. Now what is wrong about this? "At about 6 a.m. on the 27th December 1976, I heard a commotion outside." Is that correct/... (30)

correct? -- If that appears in my statement in respect of Mr Pho then that is correct.

How many statements did you make? -- I made two statements.

Why two statements? About what?

MR POTASH: Perhaps I may just clarify this, Mr Commissioner. This witness made statements to us in respect of two incidents. One concerned a Mr Pho, one concerned Mr Damane. I concentrated on Mr Damane. The summary which my learned colleague is reading from is a summary that he asked me for. We discussed this on Monday and I asked him if I could just summarize. This (10) witness has not seen this summary. I took it from the statements that he had given me, so he does not know that in paragraph 2 it says this and this and when he talks about a statement in respect of the one and the other, the same witness, the complaints stem from the same source, but he is probably confused as to Pho and Damane.

CHAIRMAN: Well, I think the question now being asked of him is whether the facts so far put to him are correct.

MR POTASH: Yes, correct. I do not think he understood that.

DR YUTAR: My Lord, through the Commission I would like to (20) ask that I be given the statements. I will make my own summary.

MR POTASH: You have got them.

DR YUTAR: I haven't. This is all I have got. Anyhow, I am reading from this statement and I do not know whether it concerns Pho, Vanqa or whoever. "At about 6 a.m. on the 27th December 1976 I heard a commotion outside." -- That relates to Mr Pho.

CHAIRMAN: It does not matter who it relates to. It either happened or it did not happen. Did it happen or didn't it happen? That is all you have got to say. -- It did happen. (30)

DR YUTAR: "Pho, Vanqa and I were outside." -- No, we were inside.

Who/...

Who were inside? -- I and Mr Pho were inside.

You and Mr Pho were inside? -- Yes.

"Migrants started attacking". -- Yes.

Is that correct? -- That is correct.

"We ran away". -- We tried to protect the house first and my family.

But if you were inside your house how could you run away? Did you run away from the house, from inside the house? -- I heard a noise outside and I went out.

CHAIRMAN: Who did you find outside? -- I saw single men (10)
come along dressed in white "doeks" on their heads.

Before you come to that, when you came outside, did you see Mr Pho outside? -- No, I went out before him and he followed me.

And Mr Vanqa? -- Mr Vanqa occupied the house in front of mine. I saw him there outside.

So you were then three outside, is that right? -- Yes.

And then you saw a number of men with white cloths on their heads coming along? -- Yes.

DR YUTAR: As a matter of interest, I am not reading from (20)
the statement, I am asking, I am just curious: were you armed with a stick? -- No.

And was Mr Pho armed with a stick? -- Yes, Mr Pho had a stick.

And Mr Vanqa? -- He also had a stick.

But you did not? -- No.

I go on to the summary. "I turned and saw Mr V. had fallen." -- Mr Pho and Mr Vanqa ran away first and I followed.

I am reading from the summary. "I turned and saw Mr Vanqa had fallen and Pho standing near him". Is that correct?(30)
-- No. What happened is this, that when I looked through the
passage/...

passage between the dairy and the other place I saw Mr Vanqa lying down.

Then you go on to say: "I saw the police." -- At that stage I did not see the police.

"Heard shots..."

MR POTASH OBJECTS.

CHAIRMAN: I think that is obviously in telegraph form.

MR POTASH: I was just summarizing for Dr Yutar on Monday afternoon. These are not the witness's words. Dr Yutar on Monday morning indicated that it would be in order if we gave him summaries of the witness's statement. This is how I understood it and if I understood it incorrectly I apologize. (10)

CHAIRMAN: This is obviously a summary.

MR POTASH: Yes, I went back and I summarized the statements, I used my words, never the witness's words, but it is a brief summary.

DR YUTAR: My Lord, Mr Potash told me on Monday that he had not been able to take statements from his clients, but he has got a summary of what they said. Now he says that he is prepared to give me a summary of the statements. I would like those statements. (20)

MR POTASH: Mr Commissioner, I would just like to clear this up. I could not have told Dr Yutar that I did not have statements. My recollection of what happened is that Dr Yutar indicated that he wanted the statements, we were in a meeting, it was mentioned whether a summary of the statements would be in order and Dr Yutar indicated that he might be asking one or two questions and this was the attitude.

DR YUTAR: Can I have the statements, please? (30)

MR POTASH: I will get the copies and I will give it to you on Monday.

CHAIRMAN/...

CHAIRMAN: It is Friday afternoon and perhaps it is time to adjourn now.

THE WITNESS STANDS DOWN.

CHAIRMAN: Will half past nine be suitable on Monday morning?

THE COMMISSION ADJOURNS.

THE/...