



SEP 26 1960

TREASON TRIALS DEFENCE FUND

PRESS SUMMARY

No. 33

This is the thirtythird issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period covered: 31st March - 26th April, 1960.

STATE OF EMERGENCY

The day following the arrest of the Treason Trial accused under the Emergency Regulations (March 31st, 1960) Advocate Maisel addressed the Court on behalf of the defence:

"It appears to us My Lords, that a situation has arisen in which the Government in support of its decision to declare a State of Emergency, has been making positive statements about the very issue in this case, namely the policy and methods of the African National Congress.

"The defence witnesses My Lord, who have been called so far, have testified to Your Lordships that the policy of this organisation today and its policy in the period covered by the indictment, namely 1952 to 1958, are the same.

"Thus, My Lords, it seems to us with respect, and we submit that to be the position, that the Government's statements constitute in reality a judgment on the case now before the Court.

"Now in normal times, My Lords, we accept the position that such statements would not be made in Parliament and certainly not out of Parliament. We do not, My Lord, for a moment dispute the right of the Government to make these statements if it finds it necessary to do so for its present purposes.

Abnormal

"But in doing so, My Lord, we submit the position to be that it creates a situation which is quite abnormal as far as this Court is concerned. And whilst, My Lord, such statements are made by the highest authorities in the land, we submit to Your Lordships, that it is obvious that the administration of justice as we understand it in normal times, is and must be affected.

"It is not, My Lord, and I want to make the position clear, it is not My Lord that we suggest that the Court will be directly affected. We wish to make that clear, My Lord, but that the Accused will be forced to undergo trial in an atmosphere and under conditions that a Court would not normally tolerate.

Accused in Jail

"Moreover, My Lord, the Court already knows if we are permitted to tell Your Lordships this in terms of the Proclamation No.640 3 and I am taking the chance, My Lord, of telling Your Lordships this, the Court knows that the accused were detained yesterday then unlawfully, now lawfully.

"Ten of the accused who were in Court yesterday were arrested as soon as the Court adjourned. From this point of view, My Lord, and having regard to the statements made in Parliament, their guilt has been prejudiced not by the Court, My Lord, but by the State.

"And where this has happened My Lord, I submit it is plain one is again in an abnormal situation, foreign to the normal administration of justice. Moreover, My Lord, in the present circumstances, whether necessarily or not, the authority of this Court or others is undermined."

Abnormal

The Crown argued that witnesses would have all the normal privileges that witnesses ordinarily have in Courts of law.

Giving judgement on this, Mr. Justice Rumpff said that one of the issues involved in this Court was the policy of the various organisations, including the African National Congress. It was suggested by the defence that this was the very issue, prima facie, that gave rise to the present State of Emergency and so the regulations promulgated in pursuance thereof.

This was not disputed by the Crown. The witnesses for the defence are to be called on this very issue and Mr. Justice Rumpff said the very fact of their being called, apart from any evidence which they may give, may render them liable at least to an interrogation under Regulation 11.

A further consideration was that it was not inconceivable that a defence witness in the course of his evidence may testify to something which offends against the very purposes for which the Emergency Regulations were passed.

This may not be in the interests of the State.

It is true that the Court, he said, may proceed in certain circumstances with the hearing of a case in camera.

"We think that such a course in all the circumstances of this case should be avoided. We have come to the conclusion that the trial should not proceed on the grounds stated above and should be adjourned."

Vanished Witness:

When the Court resumed on the 19th April Adv. de Vos said the Crown was prepared to approach the Minister of Justice and put to him any suggestions which may be made by this Court which will enable it to proceed with the trial during the State of Emergency.

Adv. Kentridge said that the Defence were faced with a number of difficulties under the State of Emergency :

"Questions have arisen about things said at certain meetings within the last few weeks. We have been trying to find some people who were present at these meetings. We are looking for a witness who will tell us something about the point on which one of our witnesses has been cross-examined. Your Lordships will bear in mind that at present it is not always easy to find a person."

Mr. Justice Bekker: Are you able to suggest any form of indemnity or guarantee that will satisfy the Defence?

Adv. Kentridge: In view of the statements that have been made, Your Lordships would very well understand the difficulties in that regard.

Mr. Justice Rumpff: If the accused are anxious for the matter to proceed and a Ministerial indemnity is given to witnesses why should the Court not accept such an assurance?

Adv. Kentridge : My Lord, I don't want to go into the question of why the Court should or should not accept the bona fides of the Minister of Justice, it would be an invidious investigation. The real question is how the accused looked at it It may be that they can't call their witnesses. They may have to close their case, but perhaps they would rather get it over with."

Ministerial Credibility

On the question of a ministerial assurance Adv. Kentridge said he would like to hear the assurance from the Minister himself and that he thought would be the attitude of a witness.

Mr. Justice Rumpff: Why should he?

Adv. Kentridge : Well, My Lord, a witness would like to know whether it is a genuine assurance, whether such assurance really comes from the Minister, what the Minister would do in certain circumstances, and I would like to interrogate the Minister.

Mr. Justice Rumpff: I am afraid I don't see why.

In support of his argument Adv. Kentridge quoted an incident which took place in Cape Town a few weeks previously :

"A certain African was leading a crowd of thirty thousand people in protest into Cape Town. He was asked to send them home. He agreed to do so if he could have an interview with the Minister of Justice. This was agreed to and the crowd went home.

It has since been admitted that assurance was not given effect to."

Mr. Justice Rumpff: Was the assurance given by the Minister?

Adv. Kentridge : My Lord, the assurance was given on behalf of the Minister.

Mr. Justice Rumpff : Was it said it was given on behalf of the Minister?

Adv. Kentridge : According to the reports which my clients have, right or wrong, it was, My Lord. What happened to him is a matter of controversy.

Minister not sacrosant.

Mr. Justice Rumpff: At least we don't know whether the Minister gave an assurance to that particular person.

Adv. Kentridge: "My Lord, there is nothing sacrosanct about the Minister of Justice. One remembers what has happened previously in this very Court in connection with the Minister of Justice.

But as far as my clients are concerned, or witnesses for that matter, My Lord, I am afraid that we cannot assume that they will simply accept such an assurance. They may want to know more about it.

My Lords, if one considers certain things which have recently been said by the Minister about the African National Congress, my clients and other members of the African National Congress obviously will not accept his bona fides.

It is not a matter we can discuss here, who is right or who is wrong."

The case was postponed to April 26th, 1960.

Argument after the Recess.

When the case resumed on April 26th, 1960, Adv. De Vos (for the Crown) informed the Court that the position of witnesses before the Court had been materially affected by the publication of Regulation 27 in the Government Gazette Extraordinary No. 6425 on the 22nd April.

The regulation stated that :

"Notwithstanding the provisions of these Regulations (Emergency Regulations) no evidence given by any person after the coming into operation of this regulation in a Criminal trial commenced in any Court or law prior to the 29th March, 1960

- (a) shall be used against him in any criminal prosecution on a charge of contravening the provision of the Regulations, and
- (b) shall be taken into account by the Minister, magistrate or commissioned officer for any of the purposes of the regulations."

Adv. Maisels replying to the Crown argument said :

"It is our submission My Lords, that the amendment does not really alter the situation. Does the amendment, My Lord, really remove the fear of administrative action against a witness?

"From the point of view of an A.N.C. member asked to give evidence which will reveal the extent of his organisation, and his views on political methods, the fear will naturally remain.

"An A.N.C. member or even a lawyer, if I may be permitted to say so, may wonder how the Minister could in considering a case, really put out of his mind what a witness says are his views on that subject."

Treason in Court.

Any witness answering questions under these circumstances, would immediately expose others to administrative action, not legal action, Adv. Maisels said.

Mr. Justice Rumpff: But he might have exposed them to a charge of high treason in any event.

Adv. Maisels : My Lord, may I make this point clear, we are prepared to face a charge of high treason in a Court of law, where the proper procedures and the facilities are available for a person to defend himself. That my Lord, is far removed from administrative action under the Emergency Regulations.

Adv. Maisels said that the Defence was not asking for a postponement. Nonetheless he had to inform the Court again that it was the view of their clients that under present circumstances they could not properly present their defence. If the Court however is ordered to continue, the accused must do so.

In summing up his reason for continuing with the trial, Mr. Justice Rumpff said :

"We regard the difficulties enumerated by Counsel as hypothetical instances that might or might not occur. In these circumstances it would in our view be incorrect to stay the proceedings for the reasons advanced by Counsel."

Both Mr. Justice Kennedy and Mr. Justice Bekker concurred.

Adv. Maisels asked leave for the accused Duma Nokwe, who was appearing for himself, to address the Court on his own behalf as well as on behalf of the other accused.

Counsel dismissed.

Mr. Nokwe : May it please Your Lordships. I have been asked by the accused to represent them and to express their views to the Court in relation to the judgment that this trial should continue despite the difficulties which were stressed by Counsel in argument. In the light of these difficulties, Your Lordships, all the accused in this case cancel the instructions to Counsel and have instructed them to withdraw from the case.

Mr. Justice Bekker: "Do you realise what that entails Mr. Nokwe?"

Mr. Nokwe The accused are quite aware what that entails. The accused feel, Your Lordships, that under the circumstances they cannot place their defence properly before this Court.

They are in doubt whether they will be able to call the witnesses they would like to call in this case; they feel that even if those witnesses are called, they doubt whether they would freely express the points of view which the accused would like this Court to have the benefit of.

Minister's Assurance Rejected

They also feel concerned with the question of exposing other people to the Emergency Regulations

because, speaking for myself and the accused generally, Your Lordship, we do not accept the bonafides of the Minister of Justice.

In addition, Your Lordships, there are great practical difficulties in the conduct of this case, such as the difficulty of consultations with counsel, that have arisen mainly because of the application of the Emergency Regulations.

In the circumstances, therefore, Your Lordships, we feel that it will be profitless to continue spending public money in conducting and defending this case. These are the views which I have been asked to express on behalf of the accused.

Mr. Justice Rumpff: You say that the accused doubt whether the witnesses will give their evidence or will be prepared to give their evidence and so on. I take it you haven't consulted the witnesses?

Mr. Nokwe: I haven't consulted the witnesses Your Lordship, but the accused are members of an organisation that is on trial before this Court. Their relationship with the Minister of Justice is known to the accused. Witnesses also would be witnesses associated with our organisation. We know what value we might place on statements and assurances made by the Minister of Justice.

Adv. Maisels: Your Lordship has heard the accused's statement. We accordingly have no further mandate and will consequently not trouble your Lordships any further.

Cross-Examination continues.

After the defence counsel withdrew from the Trial the accused conducted their own case.

The Crown continued with the cross-examination of defence witness Chief Albert Luthuli, President-general of the A.N.C.

Adv. Trengrove in cross-examination quoted a passage from a speech the Chief is alleged to have made in Port Elizabeth in 1953 :

"Yet on the other hand the African people, led by the A.N.C. are ruming towards the door of freedom. Talking has failed. We live in a time of action. History is being made. The Africans are on the right road. World progress has been achieved by revolutionary action. In France the people fought for liberty, equality and fraternity. In America they did the same. Now the process has reached South Africa itself. We ask White South Africa to accept us now. We do not want to drive the Europeans away, we wish to share equally as partners in this country."

Do you remember making that statement?

Chief Luthuli : I have already said I remember making a speech there. I cannot remember all that I said there.

Out of context.

Adv. Trengrove : I want to put it to you that when you referred to the examples of history which show that

people don't achieve freedom without blood and tears, that this is the type of freedom struggle you think of?

Chief Luthuli: My Lords, in the sense of historical repetition, Yes, but I must point out that even if I admit saying this, the Crown has still quoted this section of my speech out of context. I have no copy of my speech but as far as I can recall, I made this speech during the Defiance Campaign, where, and I think I recall this correctly, I did indicate that we are struggling in a non-violent way.

Adv. Trengrove : When you address a crowd of thirty-five thousand people and you quote specific examples of history and the nature of the revolution, why quote France and America if your pet examples are for instance, India?

Star Of India.

Chief Luthuli: My Lords, I think I have already made it plain that India to me remains a shining example. But as I have already said whenever people struggle to be free, you admire them for their struggle without putting a stamp of approval on their methods.

In fact, on this very speech which I made, I went on to say that we were going along the right path, and that in fact as far as we were concerned in South Africa, we were intent on being together and living in peace without chasing any one away and in this way we could achieve our own freedom. I think this is clear.

At this stage in the proceedings one of the accused, Mr. Nelson Mandela asked leave to address the Court on behalf of himself and the other accused.

"May it please Your Lordships, there are one or two things which I want to raise. Last Friday Your Lordships requested the Crown to see that all facilities were made available to enable all the accused in this case to consult with their witness, Professor Matthews, including, so I understand, Mr. Levy and the two women, Mrs. Joseph and Mrs. Ngoyi so that the case might proceed without interruption.

Consultation in the dark.

"I do not know whether the Crown took steps to inform the gaol authorities fully of Your Lordships' wishes, but on Saturday a cell on the second floor of the gaol was made available to us for the purpose of consultation. The cell is approximately 14 x 7 paces. Mrs. Ngoyi, Mrs. Joseph and Mr. Levy were not there.

"In the cell, My Lords, there was one table, a shelf containing the records of the case, no chairs were provided and the accused had either to stand, squat or sit on bare cement. Later during the day mats were provided for all the accused to sit on. There were sanitary buckets in the cell, which had not been emptied.

"The cell was dark and dingy. It was in these conditions, My Lords, that we were expected to consult with Professor Matthews.

"Now My Lords, I and other accused appreciate that under the prevailing circumstances the accused in the case have to put up with a certain amount of discomfort and inconvenience and although we do not expect to conduct the case under the ideal and comfortable conditions we enjoyed before the State of Emergency, we feel that we are at least entitled to the minimum facilities."

Seats for all.

Mr. Justice Rumpff. I have no doubt that proper seating accommodation will be supplied and that the room will be cleared of all unnecessary things that should not be there.

Mr. Mandela : My Lord, These are not our only complaints. We want, My Lord, to be allowed access to the toilet.

Mr. Justice Rumpff: We can't assure you that, since the position arose through this Court's indication that the consultations should start as soon as possible we have no doubt that those facilities will be improved.

Mr. Mandela then addressed the Court on a second matter :

"But My Lord, there is a second matter which has even graver implications, that I would like to raise.

"My Lords, it has been brought to our notice that the gaol authorities unduly interfered with Professor Matthews. We feel it our duty to place this matter before the Court without delay.

No evidence without advice.

"On his arrival on Thursday afternoon Professor Matthews was taken to the Superintendent of the Pretoria gaol. He was asked if he knew why he had been brought there. Professor Matthews replied that he had been informed by the gaol authorities in East London that he was required to give evidence in this Trial. He then informed them that he was not sure whether, under the prevailing conditions, he should give evidence in this case and requested permission to consult Counsel on the advisability or otherwise of giving evidence under these conditions.

"His request, My Lord, was refused by the authorities. He was told that if he did not want to give evidence in this case he should write to the Registrar of this Court and advise him accordingly.

"The officer informed Professor Matthews that the Defence Counsel had withdrawn from the case and that he would not be allowed to speak to anybody before he himself had decided whether or not he wished to give evidence.

Letter withheld.

"Professor Matthews then wrote a letter to Adv. Nokwe (one of the accused) explaining this difficulty.

"Despite repeated requests, My Lord, this letter has not as yet been delivered to Mr. Nokwe although it was written some days ago. Now My Lord, in our submission, this matter raises very serious implications, it raises the question of privacy between our prospective witness and ourselves."

Mr. Justice Rumpff: But shouldn't he follow the procedure laid down by the regulations if he wished to see a legal adviser? Mr. Trengrove what is the procedure for a detainee if he wants to see a legal adviser?

Adv. Trengrove: My Lords, I am not quite sure what the general position is.

Mr. Justice Rumpff: Shouldn't he apply to the Minister?

Adv. Trengrove: Yes, My Lord, I believe that that particular matter is dealt with under certain amended Prison regulations not in the general Emergency regulations.

Official interference?

Mr. Mandela: My Lords, with due respect, this letter was written by Professor Matthews after he had been asked by the gaol authorities to write it and I don't think in these circumstances My Lord, Professor Matthews should have to follow any other procedure but to do as he was told to do by the gaol authorities.

Now My Lords, in our submission this raises the question of privacy in the conduct of our defence. In order to present our case, we will have inevitably to communicate with a number of persons and the question arises whether the authorities are entitled to have access to such private communications. I am referring to letters which we might have to write from time to time to persons we think we should call to give evidence in this case and whether the authorities are entitled to keep these communications and not pass them on to the person for whom they are intended.

Mr. Justice Rumpff: Who says the authorities are going to keep the communications?

Mr. Mandela: This particular communication was written last week to Mr. Nokwe who is in Pretoria gaol, and in spite of the fact that the authorities know that Mr. Nokwe is there- he actually appeared before the authorities in the office - that letter was not delivered to him. It is quite reasonable to infer from this that, at least in this particular case, the authorities have no intention of delivering that communication to Mr. Nokwe.

Mr. Justice Rumpff: I don't know, they may go into the question.

Report to Special Branch.

Mr. Mandela: I am merely placing this matter before the Court for its attention. Now I must mention My Lord, that when Professor Matthews indicated his doubts about giving evidence, the officer at the gaol telephoned Colonel Prinsloo of the Special Branch and told him that Professor Matthews was not keen to give evidence at the Trial.

Again My Lord, in our submission, this is a gross irregularity, because the police are not entitled to information that is intended for Counsel about a witness we intend calling.

In any event, My Lord, on Friday last Professor Matthews was told by Lt. Col. Steyn who, we understand, is a senior officer in Pretoria gaol, that the Court had ruled that Professor Matthews must himself decide whether or not he should give evidence, without seeing Counsel.

He didn't say My Lord that this Court had given the ruling, but it was presumed that he meant this Court. The professor refused to decide the matter without Counsel. The same officer told Professor Matthews to write a letter to the Registrar and inform him accordingly if he did not want to give evidence or, on the other hand, if he wished to give evidence, he would have to forfeit all the privileges which he was enjoying at that time in the Pretoria gaol.

Food discrimination:

Now I must mention, My Lords, that Professor Matthews was receiving special treatment on medical grounds, in the East London gaol where he was detained. He was getting European food, he slept on a bed and was receiving medical treatment. When he was transferred to Pretoria those privileges were continued and he was now told by the officer in charge that if he decided to give evidence, he would have to forfeit the privileges.

But still Professor Matthews insisted that he would not decide the question without consulting Counsel. At this stage, My Lord, the officer sent for Mr. Nokwe, who was brought to his office. Addressing Mr. Nokwe the officer pointed to Professor Matthews and said "tell this man what you want from him, so that he can make up his mind whether or not he should give evidence." Mr. Nokwe told him that what he wanted was an opportunity to consult with Professor Matthews.

Mysterious Caller.

The officer pointed out that in terms of the Emergency Regulations Mr. Nokwe was not entitled to consult with Professor Matthews unless he decided whether he wished to give evidence or not. The

officer also informed Mr. Nokwe that an advocate for the Supreme Court had telephoned his office and told him that Professor Matthews may not see anybody until he himself had decided whether he should give evidence.

On being asked by Mr. Nokwe for the name of this advocate, the officer refused to give the name.

Mr. Nokwe was then told to return to his cell, without having had the opportunity of consulting with Professor Matthews.

I am instructed My Lord, that thereafter Professor Matthews was told to collect his belongings from his own cell and to go up to Mr. Nokwe's cell where he could consult throughout the night.

As from Friday night My Lord, Professor Matthews was actually deprived of his privileges and he slept on a mat on a cement floor.

I feel of course that it is my duty, My Lord, to indicate that on Saturday, he returned to the hospital and we understand from him that all his privileges were restored to him.

Stone floor.

Now My Lords, I understand that about a week ago, the Minister of Justice made a statement in Parliament to the effect that all detainees under the Emergency are provided with beds. I do not know My Lords, whether in fact this statement was made but I understand it was made and I want to point out that in our particular case My Lords, we sleep on mats and on the bare cement floor. It was in such conditions that Professor Matthews slept that night in Mr. Nokwe's cell.

I might mention that the treatment which Professor Matthews received from the gaol authorities has in fact increased his doubts as to whether it is advisable for him to give evidence in this case during the State of Emergency.

Witnesses' fear.

It is possible, My Lords, that many other persons in similar positions to Professor Matthews may be called on to give evidence for the Defence and we fear that they may have some doubt about doing so, since it is possible that the same type of treatment is being meted out to them as was given to Professor Matthews.

Further we invite Your Lordship in the most earnest terms to visit the gaol where we are detained and to see whether the conditions under which we are kept are conducive to a proper conduct of our defence."

Possible Judicial Inspection.

Mr. Justice Rumpff: If it should become necessary,

Mr. Justice Rumpff: If it should become necessary, we shall certainly visit the gaol. In the meantime the Crown will be asked to go into this matter. In regard to the other allegations, the Crown will get a copy of the record and will go into the matter, I have no doubt.

Another of the accused, Mr. Levy also asked the Court to provide for consultation with the other accused:

"I approached the prison authorities and asked them to let me consult with Mr. Mandela. They told me that Mr. Mandela was busy exercising in the yard with the rest of the accused and that when he was finished he would be made available to me.

I waited the whole of the Saturday and the Sunday, but he was not made available to me at all.

Mr. Justice Rumpff: Yes, very well, Mr. Levy the Crown will be asked to go into that too.

Prosecution replies.

Adv. Trengrove: My Lords, may I deal firstly with the matter raised in connection with Professor Matthews. My Lords, the Crown have investigated this matter, and My Lords, in the light of the information given to the Crown by the prison authorities, I wish to refute most emphatically any suggestion that there has at any time been any improper conduct on the part of the prison authorities in connection with Professor Matthews and the evidence which he is being called to give on behalf of the Defence.

My Lords, the position as far as Professor Matthews is concerned is as follows. My Lords, he is himself a qualified legal man.

When he arrived at the gaol, he immediately raised the question whether or not he was obliged to give evidence in this case.

He is alleged to be a co-conspirator. The Emergency Regulations are in force and Professor Matthews of his own accord raised, with the prison authorities, the question whether he was obliged to give evidence on behalf of the Defence. My Lords, Professor Matthews was informed that that was a matter which he had to decide for himself.

Delayed delivery.

The prison authorities told him that if he was subpoenaed to give evidence, the issue of a subpoena against him meant that he was obliged to come to Court and take his stand in the witness box and that the question of the consultation before giving evidence, was a matter in respect of which he was free to decide himself.

Professor Matthews was told that he could have

the advice of a legal advisor in that connection, and he wrote a letter to Mr. Nokwe. My Lords, before the letter could be delivered to Mr. Nokwe, the Accused Nokwe was brought to the office where Professor Matthews was.

The position was there discussed and as a result of the doubts in the mind of Professor Matthews and My Lords, without any intention of depriving Professor Matthews of any facilities at all, Professor Matthews was given the opportunity of spending the whole night with the Accused Nokwe, so as to give him the fullest opportunity to discuss the matter.

For the rest of the weekend, My Lords, except for the times when Professor Matthews was in the hospital ward at night, he was given the fullest opportunity to spend all his time with the non-White accused in this case.

The missing letter.

Mr. Justice Bekker: What has happened to the letter?

Adv. Trengrove: My Lords, I don't know whether the letter was destroyed or whether it is still in the possession of the prison authorities but the reason, My Lords, for not delivering the letter to Mr. Nokwe, right or wrongly is that the prison authorities assumed that it fell away because very shortly after the letter was written Nokwe and Professor Matthews came together and had an interview.

So that My Lords, on the information supplied by the Crown, there is no foundation at all for the fears of the accused in this regard. My Lords, if Professor Matthews wants the advice of any other legal adviser, he can inform the prison authorities and that legal adviser will be given the opportunity of interviewing Professor Matthews immediately.

Mr. Justice Rumpff: Well, I think that should be done. I think that Professor Matthews should be advised if he wishes to consult any other legal adviser, he will be put in a position to do so.

Mr. Justice Kennedy: And it should be done this morning.

Specific accusations.

Mr. Mandela: My Lords, I don't wish in any way to waste the time of the Court but I feel I shall be failing in my duty if I did not comment on the remarks which were made by the learned prosecutor Adv. Trengrove in regard to the allegations which I made against the gaol authorities in connection with Professor Matthews.

Now My Lord, both Professor Matthews and Mr. Nokwe, in whose presence some of the remarks were made, are officers of this Court. They understand English very well and we have not made here a general allegation of undue interference. I have referred My

Lords to specific things which were said by the officers, both to Professor Matthews and Mr. Nokwe.

Mr. Justice Rumpff: The difficulty is that it is obvious that Professor Matthews was not in a position to say whether he was prepared to give evidence or not. He wanted to consult with a legal adviser. That is obvious and it seems to be common cause. Apart from what has happened, he will be told, and he must be told, that he will have the right to consult with another legal adviser.

"Seek evidence or refute"

Mr. Mandela: My Lord, with increasing respect, what I am concerned with now is the impression which is given by the remarks of the learned prosecutor, because they necessarily suggest that the instructions which I was given by both Professor Matthews and Mr. Nokwe are in fact not correct.

In view of the fact that we regarded the whole question of interfering with a witness called by us as an extremely serious matter, I think that under the circumstances it is the duty of this Court to seek evidence in order either to substantiate these allegations or to refute them.

Mr. Justice Rumpff: Yes, we will consider that and proceed in the meantime. Mr. Trengrove, my Brother Bekker put this suggestion - would it not be possible for the accused to consult with any witness here, say after three o'clock?

Mr. Justice Bekker: And whatever legal adviser they want to be present.

CHIEF LUTHULI STILL IN THE WITNESS BOX

When the accused had placed their objections about their treatment by the prison authorities before the Court, the prosecution resumed their cross-examination of Chief Luthuli.

Crown Adv. Trengrove questioned him about a lecture "The World we Live in" one of a series of three which had been prepared for study by Congress members and volunteers.

Chief Luthuli said that if one read this lecture as a whole it was clear that nowhere did it say that the A.N.C. must fight for a Communist State in South Africa.

"I think the point of the lecture is to stress the class struggle - for instance when it touches on feudalism and slavery".

Adv. Trengrove: And what must be established in the place of the capitalist and the imperialist system is a communist state.

Chief Luthuli: I don't accept that.

Adv. Trengrove: Well, is it to be a People's Democracy, or a socialist state?

Chief Luthuli: A socialist state, I agree, My Lords. In other words, it has a tendency towards a socialist state, definitely.

Adv. Trengrove: Is that because of the Freedom Charter?

Chief Luthuli: Yes, My Lords. In other words, My Lord, if a person would hold a view, and there might be people who hold a view different from that stated in the Freedom Charter, it would be their personal views. It would not be the views of the A.N.C. at all.

Adv. Trengrove: You realise that this is before the Freedom Charter?

Chief Luthuli: My Lords, I would like to say exactly, it is before the Freedom Charter, and it adds greater force, because when it came to the A.N.C. and others discussing issues around the Congress of the people, then its mind was made up.

Mr. Justice Rumpff: Mr. Luthuli, The Freedom Charter was the product of the Congress alliance, was it not?

Chief Luthuli: That is correct my Lord.

Mr. Justice Rumpff: The Freedom Charter does not on the face of it propagate wholesale nationalisation:

Chief Luthuli: It does not, My Lord.

A.N.C. and Nationalisation

Mr. Justice Rumpff: I am coming back to the question put to you by the Crown. Can you say whether the African National Congress, as distinct from the Congress alliance, at any time before the Freedom Charter or thereafter, expressed itself against wholesale nationalisation?

Chief Luthuli: My Lord before the Freedom Charter I do not personally recall the African National Congress discussing the issue of nationalisation. People may have held certain views. Even after the Congress of the People My Lord, I don't recall the African National Congress discussing nationalisation specifically.

Mr. Justice Rumpff: Who then introduced the question of nationalisation into the Congress alliance?

Chief Luthuli: My Lord, as I said before at the time of the Congress of the People, various people brought along these ideas. Some of them were Congress people because there are Congress people who probably hold these ideas. They may have brought up the idea for discussion, that is quite possible.

Mr. Justice Rumpff: Then the Freedom Charter contains reference to nationalisation, but did not require wholesale nationalisation?

Chief Luthuli: That is correct.

Mr. Justice Rumpff: After the Freedom Charter was drawn up, according to the evidence, here and there in the African National Congress there were a few voices of protest against certain provisions of the Charter, on the ground that those provisions might be construed as constituting Communist principles?

Chief Luthuli: There were differences of opinion. Whether, My Lord, it was to the extent that it might be construed as being communistic, I cannot say.

Rulers and Ruled.

Adv. Trengrove then cross-examined Chief Luthuli on lecture three "Change is Needed". Chief Luthuli said that that lecture does give a biased view as far as economic and political situation in South Africa is concerned. In lectures 2 and 3 the bias does appear in some respects but to a lesser degree. Lecture 2 describes the conditions in South Africa pretty well.

Adv. Trengrove: Wherever the African National Congress say that the ruling class must be overthrown, that merely means that the system must be changed?

Chief Luthuli: I don't know, My Lords, that it would mean anything else. I don't know that it could mean anything else, because if there is one point where the African National Congress has been very clear it is from this point that we want a multi-racial South Africa, consisting of all the people who are in the land.

Adv. Trengrove: Can you refer to any ruling class anywhere in the world which in the past had accepted a system such as that based on the Freedom Charter by negotiation? and without violence.

Chief Luthuli: My Lords, I will not profess to know about the history of the world and struggles. I have already said in my evidence, the oppressed people in some lands have used violence to meet their ends, there are instances where they have not. And My Lords, there is no reason why we should not believe and hope that in South Africa we can achieve those changes in the way in which we believe.

Speech withheld.

Adv. Nokwe, one of the accused appealed to the Court to make available to the accused, a copy of the speech which the Crown alleges was made by Chief Luthuli in Durban.

Adv. Nokwe: I was informed by the Crown that they would not make it available to us because this document was not before the Court. The Crown has cross-examined the witness on that document and I can't understand what the Crown means when it says it is not before the Court.

Adv. Trengrove: My Lords, the Crown is not using that document as evidence in any way. The Crown was using that to refresh the witness' memory. As far as the Defence is concerned, if they want the full

text of the speech made by this witness on that date, they can get it from the witness.

After some discussion Adv. Trengrove said that the Crown was "prepared to hand Chief Luthuli's part of the speech to the Defence for their perusal."

Mr. J Mr. Justice Bekker: Well, whether you do it as a gesture or whether you do it as an act of grace or whether you are compelled to do it, will you do it?

At this stage the Court adjourned till May, 17th, 1960.

ISSUED BY THE TREASON TRIALS DEFENCE FUND (W.O. 2092)
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A P O L O G Y

We apologise for the interruption in the flow of
Press summaries. This was due to the state of
emergency and the detention of many helpers. We
hope soon to have made up the back log.

TREASON TRIALS DEFENCE FUND
PRESS SUMMARY

5 OCT 1960

SOUTH AFRICAN No. 34

This is the thirtyfourth issue of a regular bulletin giving a factual resume of the proceedings of the Treason Trial.

Period Covered: 17th - 26th May, 1960.

Professor Matthews and Evidence:

On the resumption of the Court, on 17th May 1960, the cross-examination of Chief Luthuli was interrupted when Mr. Duma Nokwe, one of the accused, made a statement to the Court on the question of Professor Matthews and his evidence:-

"On May 2nd, Mr. Mandela addressed your Lordships on an allegation that the authorities had unduly interfered with Professor Matthews. Mr. Mandela gave Your Lordship details of the facts upon which this allegation was made.

"Your Lordship will further recall that Mr. Mandela stated that the Crown had given the impression that the version of the accused and Professor Matthews was untrue and he stated that the matter was serious and should be investigated by the Court by hearing evidence."

Mr. Justice Rumpff: "Who made that suggestion?"

Reflection:

Mr. Nokwe: Indeed My Lord, it was clear to us then that the Crown had suggested that the version of the accused and their witness was a fabrication. We regarded this as a serious reflection on both ourselves and our witness.

"On the 10th May, Your Lordship, I addressed Your Lordship and stated that Professor Matthews had informed us that he was not willing to give evidence during the State of Emergency.

Adv. Trengrove, for the Crown, then stated that the Crown did not accept the position as stated by us, that they did not accept the explanation for not calling Professor Matthews, He said:-

"the accused cannot hide behind the Emergency Regulations as an excuse for not calling Professor Matthews."

"On Wednesday 11th, the day after I had made that statement in Court, Professor Matthews, we are instructed, was driven from the gaol to this Court, not, My Lords, at his own request, but at the instance of the Crown.

"We are instructed, My Lord, that Professor Matthews met Advocate Trengrove who was later joined by Mr. van Niekerk, Adv. Trengrove told him that he had called him to find out about the question of giving evidence."

Letter Lost in Transit?

"We are instructed that Professor Matthews informed Mr. Trengrove that he had written a letter to the Registrar, whereupon Adv. Trengrove said that he was not aware of this letter and had not seen it. Professor Matthews told him the contents of the letter.

"Adv. Trengrove then told the witness that the accused could subpoena him if they wanted him to give evidence. Professor Matthews was returned to the prison.

"At no stage, My Lords, did Adv. Trengrove inform us that he was going to interview Professor Matthews, our witness, nor did he subsequently report that he had indeed so consulted or interrogated our witness....."

Mr. Justice Bekker: May I ask on a point of clarification here, I thought that he was not going to be a Defence witness. Why do you say "our" witness?"

Mr. Nokwe: "We say so My Lord, because we made it very clear at page 13,372 that we were not going to call Prof. Matthews during the State of Emergency."

Mr. Justice Bekker: "Well, we don't know how long the State of Emergency is going to last."

Mr. Nokwe: "That is so, My Lord, it might end tomorrow, it might end in the next six weeks. He nevertheless still remains our witness, and we are likely to call him as a Defence witness."

No Testimony During Emergency:

Mr. Justice Rumpff: "On this date, the 11th, Professor Matthews had indicated that he was not going to give evidence."

Mr. Nokwe: "During the State of Emergency, that is absolutely clear."

Mr. Justice Rumpff: "It doesn't matter, he says he is not going to give evidence. He also indicated that you could subpoena him. You haven't subpoenaed him?"

Mr. Nokwe: "We have not subpoenaed him yet, My Lord. But I think it is absolutely clear that Professor Matthews as an alleged co-conspirator in this case, My Lords, could certainly not be the Crown's witness. "We say, Your Lordships, that this went on behind our backs. This investigation was obviously conducted by the Crown Your Lordship, because the Crown did not accept the explanation and it was done in our view with the hope of finding that statements were made in Court which were not true."

Two Visitors:

"On the same day, Your Lordships, Professor Matthews was visited in gaol and interrogated by a gentleman whom he believes to have been a policeman in plain clothes. This gentleman was accompanied by a prison official. Professor Matthews was asked why he did not accept the assurances of the Minister of Justice and whether he could put his hand on his heart and say that there was nothing behind the statement he had made that he was unwilling to give evidence in this Court.

"Professor Matthews was further told that he was a well educated man and should know that when the Minister of Justice had given an assurance it should be accepted."

Mr. Justice Rumpff: "Did you get all this information from Professor Matthews?"

Mr. Nokwe: "Yes, My Lord. This official told Professor Matthews that in his view he should give evidence.

"My Lord, it seems to us that the Crown and the authorities are taking advantage of the State of Emergency in order to commit what in our view constitutes a gross irregularity.

"At no stage, My Lords, have we enlisted the assistance of either the Crown or the authorities to help us prepare our witnesses. Nor have we asked anybody to persuade Professor Matthews to come and give evidence."

Investigation of Witness Alleged:

"We resent, Your Lordships, the suggestion that statements made by us or on our behalf in open Court are false and require detective work, both by members of the Crown team and by the authorities.

"We also resent the suggestion made, Your Lordships, without foundation, that statements made by our witness to this Court are untrue and that there is something else behind them. As far as credibility and our honesty is concerned, Your Lordship, the Crown will have ample opportunity to test that during these proceedings, but most of all My Lord, we object in the strongest terms to members of the Crown team and the police authorities interrogating our witness...."

Mr. Justice Rumpff: "What do you mean by 'our witness'? It is obvious that you don't want him to give evidence."

Mr. Nokwe: "We don't say we don't want Professor Matthews to give evidence, Your Lordship. We say that it isn't the duty of the police authorities to assist us."

Mr. Justice Rumpff: "I am putting it to you that the impression is that you don't want to call him as a witness."

Mr. Nokwe: "During the State of Emergency, Your Lordships, which might end at any time. And we say this is done merely because, Your Lordships, Professor Matthews is detained."

JUDGE ASKS "WHY?"

Mr. Justice Rumpff: "Now why don't you want to call him to give evidence during the State of Emergency?"

Mr. Nokwe: "Because, Your Lordship, he has given us his honest opinion that he is not willing to give evidence during the State of Emergency."

Mr. Justice Rumpff: "So you don't want to call him because he doesn't want to give evidence?"

Mr. Nokwe: "Exactly, Your Lordship, that is the statement I made to this Court last week."

Mr. Justice Rumpff: "If he is willing to give evidence, would you subpoena him?"

Mr. Nokwe: "We wouldn't even have to subpoena him Your Lordship, he would just come and give evidence at our request."

CROWN EXPLAINS

Adv. Trengrove: "My Lords, to a certain extent the statement made by the accused Nokwe is a reflection on my integrity personally and also on the conduct of the Crown, and in view of that My Lord, in view of the fact that I am involved personally I do not wish to reply in the language which I would otherwise have done, and I will merely put the facts before your Lordships as they are available to the Crown and leave the matter in Your Lordship's hands.

"My Lords, the statement that was made by the Crown that it didn't accept the explanation of the Defence for not calling Professor Matthews was based on the fact that the unwillingness of a witness to testify is not excuse for not calling him. Many witnesses are unwilling and they are brought to court under subpoena.

"Professor Matthews, after the Defence had said that they were not calling him, was called and that question only was put to him: whether he

"wanted to give evidence as soon as the State of Emergency is lifted, which might happen any day, and in that event the Crown could keep him here so that he would be available at the shortest possible notice to the Defence."

NO INTERFERENCE:

"On the other hand, if he did not wish to give evidence at all, it seemed more practicable to send him back to his original place of detention. That position was explained to Professor Matthews and he accepted it. At no stage, My Lords, was there the slightest intention of interfering with the witness at all."

Mr. Justice Rumpff: "The only other allegation is that somebody visited him in the company of a prison officer and suggested to him that he might give evidence or should give evidence."

Adv. Trengrove: "My Lords, we have no knowledge of that at all."

Mr. Justice Bekker: "Mr. Nokwe, you have heard the Crown's explanation."

Mr. Nokwe: "I have heard, Your Lordship, but Your Lordship, Advocate Trengrove says he asked only one question. But this doesn't seem to tally with what Professor Matthews told us."

Mr. Justice Bekker: "There is an apparent conflict of fact. What do you suggest we do about it?"

Mr. Nokwe: "I leave it entirely in Your Lordship's hands."

Mr. Justice Bekker: "Mr. Nokwe, it seems to me certain things fall within the jurisdiction of this Court. To the extent that matters do fall within our jurisdiction we can deal with them."

Mr. Nokwe: "In the first place, Your Lordship, I find it very difficult to understand why the Crown should go and ask Professor Matthews whether and when he will be called."

Mr. Justice Bekker: "As I understand the Crown, the Crown wanted to know whether he is going to be called as a witness, then they will keep him here. If his desire is not to give evidence, he can go home. That was the purpose of the interview."

Mr. Nokwe: "As your Lordship pleases. The suggestion seems to be that Professor told the Crown that he is not prepared to give evidence. But that has never been the attitude of Professor Matthews that he will not give evidence."

PERSUASION:

Mr. Justice Bekker: "It may be that the Crown isn't aware at all of the fact that there was a subsequent interview by certain people in an endeavour to persuade Professor Matthews to give evidence. Whoever interviewed him, if there was this interview, did so under the Emergency Regulations. Now if that is the position, can you bring it home to the Crown?"

Mr. Nokwe: "Your Lordship, if that is the position then that raises an entirely different point, and a much more serious point, namely that our witnesses are subjected to interrogation about matters which are before the Court."

Mr. Justice Rumpff: "Professor Matthews told you what happened between him and the person who interviewed him, that he was asked whether he wouldn't reconsider the question of his evidence."

Mr. Nokwe: "I have given Your Lordship almost a verbatim report of what went on. He was asked why he did not accept the assurance of the Minister, that he should accept the assurance of the Minister, and also if there was nothing else behind his unwillingness to give evidence."

"I did not see that it is the function, nor the right, of a police officer to go and interrogate a witness in this way, Your Lordship."

PRECOGNITION?

Mr. Justice Rumpff: "But he isn't a witness."

Mr. Nokwe: "He is going to be a witness Your Lordship. It is merely a question of time, he is not a witness now."

Mr. Justice Rumpff: "He may be."

Mr. Nokwe: "He may be, that is so, and he is being precognised by the Defence."

Mr. Justice Rumpff: "At the moment he is not a witness."

Mr. Nokwe: "Your Lordship, he is being precognised by the Defence - he has been precognised. A witness, surely Your Lordship, doesn't become a witness until he has given evidence. He is, moreover, a co-conspirator in this case, Your Lordship."

Mr. Justice Rumpff: "An alleged co-conspirator".

Mr. Nokwe: "I can only say that the simplest way in which the Crown could have found out what they wanted to know was to ask the Defence at what stage they intended calling Prof. Matthews, because this is going to be determined by the Defence."

Mr. Justice Rumpff: "We have heard the statement by Mr. Nokwe and the explanation by Mr. Trengrove. We don't think that any irregularity has been committed and we don't propose to take any steps in this matter."

Adv. Trengrove: "My Lords, the co-accused Nokwe has mentioned the matter that people may be interrogated under the Emergency Regulations, and that those people may turn out eventually to be their witnesses."

"If the accused Nokwe could give the Crown a list of witnesses they intend calling, the Crown may be able to assist the Defence in that respect."

WESTERN AREAS REMOVAL

Returning to Chief Luthuli's evidence, Mr. Justice Rumpff questioned him about a document entitled "Report of the Secretariat on the Western Areas". This document had been found in the offices of the A.N.C. and contained a lengthy review of the campaign against the Western Areas Removal Scheme. Chief Luthuli said that he had not seen this document before.

Mr. Justice Rumpff: "Whether you remember this document or not, I just want to read this paragraph again to you, because it may mean something, and I want your opinion on that meaning or that possible meaning. The paragraph reads - this is after the campaign: "We must keep clear in our minds the objective of the campaign. Simply stated this is to arouse the people and to organise them in a campaign of resistance to apartheid." Now the first campaign referred to is not the campaign in

regard to the Western Areas, apparently it is the Resist-Apartheid Campaign?--"

Chief Luthuli: "Of which the Western Areas was a part."

Mr. Justice Rumpff: "Yes, at that stage it included it. "The basis of such resistance is to take the form of non-collaboration of a quantity and quality which must compel the government to use all its resources to impose its will at any and every stage." Now "non-collaboration of a quantity and quality", would that include action similar to what took place at Meadowlands, in other words an unwillingness to go, and industrial action?--"

Chief Luthuli: "Yes, My Lord."

WHAT IS POSITIVE ACTION?

Mr. Justice Rumpff: "To use 'of a quantity and quality which must compel the government to use all its resources to impose its will.'" In this case police were necessary to remove the people from Meadowlands. Had there been industrial action, there would have been a straining of resources, I take it?"

Chief Luthuli: "That is so, My Lord."

Mr. Justice Rumpff: "Then it goes on, "Non-collaboration from the masses and the individual, designed ultimately to strain the resources of the authorities and create a situation more favourable to the movement, and for more direct and positive action." Now assume you have a refusal to move or a refusal to pay taxes and you have a stay-at-home strike. Could it be then said that there is now a situation more favourable for direct action? If so, what action was contemplated?--"

Chief Luthuli: "Well----"

Mr. Justice Rumpff: "In other words, if I may repeat it, if you have a situation where you are straining the resources of the authorities, the police and everybody, through a variety of methods, then apparently this paragraph says a situation has arisen for more direct and positive action. Now what could that mean?"

Chief Luthuli: "I follow My Lords, I wouldn't - I really wouldn't-----"

Mr. Justice Rumpff: "You see, it might be argued that if read in the way I have done it, it means only one thing - that if you have the authorities or the state in a position of extreme strain, then the only direct and positive action may be open revolution?--"

Chief Luthuli: "I follow, My Lord. I wonder if My Lordship would allow me to exercise my mind a bit more to it."

Mr. Justice Rumpff: "I would very much like you to consider this."

Adv. Trengrove: Resuming his cross-examination:-

"Mr. Luthuli, while you are considering it, I want to suggest to you that that is exactly what the African National Congress had in mind?"

Chief Luthuli: "My Lords, regardless of what interpretation I might have had later, I am positive that it was not in the mind of the African National Congress to go outside its policy."

ADV. TRENGROVE: "Mr. Luthuli, you will agree that a campaign like the Western Areas, as contemplated by the African National Congress and conducted to the extent set forth in that memorandum, would seriously disturb and impair and endanger the existence and security of the state?--"

CHIEF LUTHULI: "I have already expressed my point of view regarding that, My Lords, but I think I had better repeat it, and it is this - that insofar as endangering the security of the state, the African National Congress doesn't work with that in mind. It does work to bring a stronger pressure on the government, but it has no intention, it has said so, of destroying the existence of the state."

Adv. Trengrove: "Mr. Luthuli, I didn't ask you the intention of the African National Congress. I asked you, I put it to you that that type of campaign constitutes a danger to the safety and security of the state whether it was intended or not?"

Chief Luthuli: "My Lord, speaking as a layman, I generally associate endangering the security of the state more with armed force."

Adv. Trengrove: "So your answer to that question is NO."

Chief Luthuli: "Yes."

Adv. Trengrove: "That type of campaign doesn't endanger the safety and security of the state? Is that your answer?"

Chief Luthuli: "That is what I would say, My Lord."

RESHA RECORDED

On the next day, 18th May, Adv. Trengrove asked Chief Luthuli to listen to a tape recorded speech made by the Accused Mr. Resha on 22nd November, 1956, at 37 West Street, Johannesburg, the office of the African National Congress.

Adv. Trengrove: "Mr. Luthuli, it was a secret meeting, at which only certain delegates who presented their credentials were allowed to be present. I am playing a portion of the meeting only, that is the whole of Resha's speech as taken down on the tape. Now I just want to give you this transcript. It was a secret meeting according to the evidence, called for the specific purpose."

The tape recording was then played. One sentence in the speech was:- "If you are a true volunteer and you are called upon to be violent you must be absolutely violent. You must murder, murder."

Adv. Trengrove: "Mr. Luthuli, you have listened to what the Crown alleges to be the voice of Resha. Do you agree that it is a subversive speech; a speech inciting people to violent action?"....

Chief Luthuli: "My Lords, I will not say subversive because I don't know the legal meaning, but it is a very violent speech."

Adv. Trengrove: "Did you hear the reaction of the people to whom he was speaking?"

Chief Luthuli: "Yes, I heard."

Adv. Trengrove: "And what was that reaction?"

Chief Luthuli: "They applauded."

Adv. Trengrove: "Is it inconsistent with your alleged policy of

non-violence?"

Chief Luthuli: "In part it is."

Adv. Trengrove: "Now Mr. Luthuli, did any of the members of the National Executive or anybody ever take any steps about this speech?"

Chief Luthuli: "My Lords, I wouldn't know to what extent the National Executive became aware of the speech. I was not aware of it; I don't know how many were aware of it, other than those who were at the meeting."

A FIGHTING SPEECH

Adv. Trengrove: "Now having listened to the speech, are you shocked to hear that a speech of this nature was made?"

Chief Luthuli: "There are some parts that shock me. There are parts that one might call a fighting speech, but there are some parts that I don't like at all."

Adv. Trengrove: "Mr. Luthuli, at that meeting, according to the evidence of the Crown at this stage, nobody dissociated themselves with any part of that speech?"

Chief Luthuli: "That is possible."

Adv. Trengrove: "Would that type of conduct be consistent with an organisation which has a non-violent policy?"

Chief Luthuli: "I have already indicated that there are some parts which I condemn."

Adv. Trengrove: "Now the attitude of the other people there, who know the policy of the African National Congress?"

Chief Luthuli: "My Lord, naturally I cannot explain the reaction of people who were."

ADV. TRENGROVE: "You see, Mr. Luthuli, if the Volunteer-in-Chief makes that type of speech, who is in a better position to know what the duties of a volunteer are than the Volunteer-in-Chief?"

CHIEF LUTHULI: "Oh that doesn't follow. If I may make an illustration, My Lords. I don't know about army technique, but surely if a general were to do something that were not right, I don't think it could be said that therefore the whole policy would have to be aligned to what that particular general, who is wrong, did. I wouldn't accept that proposition."

Adv. Trengrove: "I am not asking you to approve of what he did. I want to know who was in a better position than Resha to know what the duties of a Volunteer are? Was there any person in a better position than Resha?"

Chief Luthuli: "No."

Adv. Trengrove: "And I put it to you, Mr. Luthuli, that Resha made this speech and he gave those instructions to the Volunteers because that was exactly what Volunteers were expected to do? And you know that."

Chief Luthuli: "I don't because Resha would be expected to lead the Volunteers along the policy of Congress. Now if Resha as a general departs, he departs as Resha. It has nothing to do with the policy of the African National Congress."

Adv. Trengrove: "And judging by the reaction of the people whom he addressed, do you think they thought he was departing from policy?"

Chief Luthuli: "My Lords, it is difficult to say about the whole meeting. It was a time when feelings were very high, and their applauding might be interpreted as approving. On the otherhand I wouldn't really go as far as to say that they are applauding the violent aspects. As I have already indicated, I don't approve, it would be contrary to Congress policy, and if they were applauding that part, then they were wrong."

THE MEANING OF "OVERTHROW"

Mr. Trengrove then cross-examined Chief Luthuli on the report of the National Consultative Committee on the Anti-Pass Campaign. He read the paragraph: "But victory for the people means the end of the cheap labour system of South Africa, and this can only be finally achieved by the overthrow of the ruling parties of South Africa."

Adv. Trengrove: "Now was it the purpose of the A.N.C. in conducting this campaign to overthrow the ruling class in South Africa?"

Chief Luthuli: "I have expressed myself in similar expressions. It depends on the interpretation you put on "overthrow"."

Adv. Trengrove: "Now, Mr. Luthuli, there can be only one interpretation of "overthrow" of the ruling class?"

Chief Luthuli: "I am not sure. I am not an expert in English."

Adv. Trengrove: "What explanations have you got for "overthrow of the ruling class:"

Chief Luthuli: "I mean democratically getting rid of the ruling class."

Adv. Trengrove: "By negotiating with them?"

Chief Luthuli: "By forcing them to negotiate or getting the electorate to get rid of the ruling class."

Adv. Trengrove: "But Mr. Luthuli, you have already said in your evidence that the people that have the vote are the ruling class in South Africa?"

Chief Luthuli: "I have, yes. I have also said that by applying pressure on the electorate, the white electorate...."

Adv. Trengrove: "Or the ruling class?"

Chief Luthuli: "Yes, on the ruling class."

ADV. TRENGROVE: "By applying pressure on them?"

CHIEF LUTHULI: "By applying pressure on the ruling class we have good reason to hope that there will arise out of the ruling class a people who might induce the government to change. I have said that over and over again in my evidence."

ADV. TRENGROVE: "And you would describe that as the overthrow of the ruling class?"

Chief Luthuli: "Yes."

Adv. Trengrove: "If the ruling class is willing to extend the vote to the Africans, that would be overthrow of the ruling class?"

Chief Luthuli: "I indicated somewhere in my evidence that it is the overthrow, My Lords, of a system, not necessarily of persons."

Adv. Trengrove: "Mr. Luthuli, you visualise that ultimately parliament would pass the necessary legislation to give effect to your aspirations?"

Chief Luthuli: "Yes."

Adv. Trengrove: "Then I want to go on with the report. "There are

"other ways of struggle against the pass laws, each of which has its place. Pass laws can be fought by demonstrations and strikes, by petitions and meetings, by boycott and resistance and disobedience, by active struggle as well as passive. Which of these ways is the best? This can only be conceived in the precise circumstances in which we find ourselves in each area at any one time. Sometimes one and sometimes another. We must learn from the errors of the Bantu Education and the Western Areas Campaign not to be rigid.... We must be ready to use any and every means of struggle which is appropriate and possible - and which advances us to our goal."

Adv. Trengrove: "Are these the views of the African National Congress as to how the struggle should be conducted?"

Chief Luthuli: "My Lord, all I can say at this stage is that in any particular area you may use a certain method which may differ from that of another area. "

Adv. Trengrove: "Now can you by way of illustration, Mr. Luthuli, distinguish between active and passive struggle?"

Chief Luthuli: "My Lords, I stop because the illustration I might give to indicate active may not be quite good for me."

Adv. Trengrove: "I won't ask you if you approve of that. I just want to know by way of illustration."

Chief Luthuli: "Supposing I did give an illustration, won't that react against me in the case that I am facing?"

(Chief Luthuli was at the time facing a charge of burning his reference book.)

Mr. Justice Rumpff: "It might. You needn't answer that question."

THE ANTI-PASS CAMPAIGN

Adv. Trengrove: "Now Mr. Luthuli, you say that the passes was one of the things which worried the African people the most?"

Chief Luthuli: "That is correct, My Lord."

Adv. Trengrove: "That would also be one of the best ways of educating the masses politically?"

Chief Luthuli: "Yes, it could be a means."

Adv. Trengrove: "In building up the resistance of the people to the ruling classes, this would be one of the best ways of doing it?"

Chief Luthuli: "It would be one of the ways."

ADV. TRENGROVE: "And that is why the A.N.C. embarked on this nationwide Anti-Pass Campaign?..."

CHIEF LUTHULI: "No. The primary object is to get relief from the pass, not merely to use it as part of the campaign. It is true these campaigns are interwoven, but the stress is on getting rid of the pass."

Adv. Trengrove: "In your whole liberatory struggle, you say that this kind of grievance of the masses must be used to get them to participate in the greater struggle?--"

Chief Luthuli: "It is part of the struggle, but the immediate objective is against the pass."

On the 25th May, 1960 Mr. Trengrove questioned the witness on leaders of the Congress Movement who went to Russia and other countries.

Adv. Trengrove: "Mr. Luthuli, Congress movement leaders, Sisulu, Nokwe, Paul Joseph, Lilian Ngoyi, Masina and others, went to Russia and its satellites and saw conditions there?"

Chief Luthuli: "They did, surely".

Adv. Trengrove: "They were met there by the leaders of other countries and discussed matters of common concern, and they came back and they reported. Do you deny that?"

Chief Luthuli: "I wouldn't deny that."

INTIMATE KNOWLEDGE

Adv. Trengrove: "Your organisation had an intimate knowledge of the political theories and practices of the East and of Soviet Russia?"

Chief Luthuli: "I categorically deny that, because the fact that those people did go to the East, and they are merely a small number of the leadership, does not indicate that therefore the organisation had an intimate knowledge of the East."

It doesn't follow that because they went there, they carried out propaganda for the East. That they didn't do, to my knowledge. They may have done so privately, but not through Congress machinery."

Mr. Justice Rumpff: "If their knowledge is very small, would they not be more susceptible to propaganda?"

Chief Luthuli: "My Lords. I...."

Mr. Justice Rumpff: "Without knowing that it might be propaganda?"

Chief Luthuli: "The ordinary people might be, but I said the leadership, My Lord, and I think the leadership wouldn't be. After all, a leader knows his mind; he knows what he wants and what he stands for."

Mr. Justice Rumpff: "But if the members of an organisation would not know that a particular brand of political philosophy is to be regarded as communism then would it be easier for leaders - I am talking hypothetically - to convey communist propaganda without the rank and file knowing that it is communism?"

Chief Luthuli: "Yes, I concede My Lords, it would be, because they wouldn't have a standard of judging. So long as that particular thing presented appeared to them to meet a need, they would be more susceptible."

CONGRESS AND CHINA

Adv. Trengrove: "Take Communist China, for instance. What was the attitude of the African National Congress towards Communist China?"

Chief Luthuli: "One can't stop the Crown using the expression, the attitude of the African National Congress. I have already indicated that our attitude was not an overall one, but was determined by a particular situation. Say that Communist China had now struggled and freed itself, we admire communist China to that extent,

Adv. Trengrove: "Did you express that admiration?"

Chief Luthuli: "I think we did."

Adv. Trengrove: "Did you regard communist China as one of the countries that was struggling for peace?"

- Chief Luthuli: "It was a country that was struggling to free itself."
- Adv. Trengrove: "But after it had freed itself?"
- Chief Luthuli: "There again, My Lords, there would be no Congress mind, but leaders might express themselves in that direction."
- Adv. Trengrove: "Mr. Luthuli, you held out those countries as examples of what real democracies are, because you wanted the people in this country to accept that type of democracy, and you know that?"
- Chief Luthuli: "I don't know that, because I don't recall a single resolution of the African National Congress which says that we uphold China as an example of a republic that ought to be established here."
- Adv. Trengrove: "Because you had not yet sufficiently indoctrinated the masses?"
- Chief Luthuli: "We are not indoctrinating the masses. The African National Congress was not indoctrinating the masses to accept China or any state. It never did."

DISTRIBUTION OF LAND

Chief Luthuli was then cross-examined at length by Mr. Trengrove on the chapter of the Freedom Charter which deals with land ownership.

- Adv. Trengrove: "Chief Luthuli, we were dealing with this paragraph in the Freedom Charter which says that the land shall be shared amongst those that work it, and you said that that meant that the land should be distributed amongst all the people that make a living out of the land, is that correct?"
- Chief Luthuli: "That is correct."
- Adv. Trengrove: "And that that should be done on a basis of equality between the people, irrespective of race or colour?"
- Chief Luthuli: "That is so, My Lords. I don't know what the Prosecutor means by equality."
- Adv. Trengrove: "That it should be shared equitably amongst all the people that work on the land?"
- Chief Luthuli: "Quite so, My Lord."
- Adv. Trengrove: "And Mr. Luthuli, you said in your evidence-in-chief that you were in favour of a free economy as far as land was concerned?"
- Chief Luthuli: "That would be correct."
- ADV. TRENGROVE: "Now at the moment the complaint of the African National Congress is that the distribution of land is approximately 13% in respect of the nine million non-whites, and 87% in respect of the two or three million whites. Now Mr. Luthuli, would you concede that the ratio of people actually employed on the land is about one white to ten non-whites?"
- Chief Luthuli: "I wouldn't know the ratio, My Lord."
- Adv. Trengrove: "Has the African National Congress never investigated that matter?"
- Chief Luthuli: "Not to my knowledge."
- Adv. Trengrove: "Well, the statistics are available?"

Chief Luthuli: "I have no information".

Adv. Trengrove: "You have no idea at all what the ratio is?"

Chief Luthuli: "I personally have no idea."

Adv. Trengrove: "And the African National Congress?"

Chief Luthuli: "It is possible that there may be material in our offices, but I have no information personally."

Adv. Trengrove: "You haven't even got an approximate idea of the ratio?"

Chief Luthuli: "No."

Adv. Trengrove: "Well, Mr. Luthuli, have you got any idea of what extent or percentage of the land at the moment held by whites would have to be released in order to comply with this demand by the Freedom Charter?"

Chief Luthuli: "My Lords, I think I said last time when I was questioned by the Prosecutor that it would be difficult and not even realistic to expect that one would give details. The Freedom Charter did not set out details, but general principles, and I think that question would imply that we are in fact now carrying out our plans."

Adv. Trengrove: "Mr. Luthuli, the 1955 Report of the A.N.C. states that for the first time the demands of the people have been stated in unequivocal and unambiguous language, and one of these demands is that the land shall be shared amongst those who work it. Now in order to comply with that demand, do you concede that the whites should release a very large percentage of the land at the moment held by them? Do you concede that?"

Chief Luthuli: "I concede that."

Adv. Trengrove: "Mr. Luthuli, you and the whole Congress movement stressed the fact that there are two forms of oppression, political and economic?"

Chief Luthuli: "Yes, that is correct and I did say that those were interwoven."

Adv. Trengrove: "And assuming that you expropriated 80% of the land held by the Whites, the white people would still be economically the stronger group, if they were paid compensation for their land, not so?"

Chief Luthuli: "They would be, My Lord."

Adv. Trengrove: "And you would have to prevent them from using their financial resources to repurchase the land taken from them?"

Chief Luthuli: "In the interests of the country as we visualise it, it would be necessary to do that."

ADV. TRENGROVE: "Mr. Luthuli, I want to put it to you that the Freedom Charter was a revolutionary document, and that it couldn't be put into effect without breaking up the whole political and economic set-up of the present South Africa, that is correct, is it not?"

CHIEF LUTHULI: "I think that is generally correct."

CHARTER "A BILL OF RIGHTS"

Adv. Trengrove: "And that one would have, once the demands were put into effect, a state which differs radically and fundamentally from the present state?--"

- Chief Luthuli: "In some respects. I think that if you read the whole of the Freedom Charter, My Lords, you will find that the demands made in the Freedom Charter are such as you get in any bill of rights. For an example, I think that if you were to make comparisons with the Freedom Charter, you will find that...."
- Adv. Trengrove: "I am not asking you to compare it with anything else. I am asking you to compare it with the present political and economic structure of the Union?--"
- Chief Luthuli: "In some respects there would be radical changes, in others they wouldn't be so radical."
- Adv. Trengrove: "Mr. Luthuli, I also want to put it to you that you never expected that the White oppressor would ever accept and concede your demands?"
- Chief Luthuli: "My Lords, I wouldn't be in Congress if I didn't expect that White South Africa would some day reconsider. That is my honest belief. When, My Lords, I cannot say."
- Adv. Trengrove: "But you were not prepared to wait for that day. You were telling the people now, not next year or any other year. Leading members of your organisations said within a matter of five years. You weren't going to wait for the white electorate to change their minds and you know that, Mr. Luthuli?"
- Chief Luthuli: "The Prosecutor, in my view, is really putting a wrong construction into a phrase or motto intended to gear the peoples' determination."

Chief Luthuli was questioned on a speech made by Nimrod Sejake, a co-conspirator, at a meeting called by the Freedom Charter Committee in Johannesburg on the 18th September, 1955.

Mr. Sejake said:-

"One must be prepared to clash with the servants of the state and if the struggle assumes very large and countrywide dimensions one shall have to clash even with the armed forces of the country."

ADV. TRENGROVE: "So that I put it to you that at this meeting, Mr. Luthuli, the Congress movement told the people that in order to achieve the aims of the Freedom Charter they must be prepared to clash not only with the police, but even with the armed forces of the country, once the struggle assumed country-wide dimensions. That was the attitude of the Congress in regard to the implementation of the Freedom Charter?"

CHIEF LUTHULI: "No, My Lord, that is not correct. If by clash with armed forces the Prosecutor reads violence, very definitely that would not be the attitude of the African National Congress, and if the speaker meant that, I would without hesitation condemn it."

Mr. Justice Bekker: "I am rather interested in the phrase used by the speaker "One must be prepared to clash with the servants of the state."

Chief Luthuli: "The word 'clash', might mean violence or merely meeting, but there is a greater leaning towards violence in the meaning of the word 'clash'".

THE THREE LECTURES

Referring to the three lectures, Mr. Justice Bekker asked whether they had anything contrary to A.N.C. policy, and whether there
Page 15/.... was anything

was anything in the lectures the A.N.C. would not want the public to accept.

Chief Luthuli replied:

"One aspect contrary to A.N.C. policy is in Lecture 3, where the writer, describing a peoples' democracy, mentions complete nationalisation. But at that time the Congresses hadn't legislated on the matter, so it was not against any policy. We had stressed time and time again that we hold different views, and that is not a question of being contrary to A.N.C. policy. I would not personally like to have Lecture 1 circulated in the form in which it is, because it might confuse some people about A.N.C. policy, but not because it is against policy. I readily concede that many items listed under "what is a People's Democracy" are found in the Freedom Charter. But the rights and freedoms listed there are such as you would get in almost any Bill of Rights for any group of people."

On the 25th May, 1960 the Crown concluded its cross-examination of Chief Luthuli. He had been under cross-examination for 28 court days. The trial was adjourned until 1st June to allow for the accused to prepare their re-examination of Chief Luthuli.

Shortly after he concluded his evidence-in-chief for the defence, Mr. Luthuli became ill and for most of his cross-examination his time in the witness box was limited to two hours a day.

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