

circumstances rests with the individual.

In those circumstances, Mr. Luthuli, one wouldn't require more than a few policemen to assist the National Volunteer Board in its removal on a particular day? In those circumstances, it wouldn't be necessary to have more than a handful of policemen to assist the Resettlement Board in the moving of the people? --- How can I answer that, because I am not the government. 5

No, but as you saw the position? When a policemen presents himself at a particular house, he tells the person he must go, that person must say he doesn't want to go, and then as far as the A.N.C. is concerned, then he should really obey the order of the police and go? --- My Lords, I have said that when he sees that the police is going to remove them by force, I think I did say so, then he would go. I think I have also said a situation like that, it rests with the individual, I can't go beyond that. 15

What I want from you, Mr. Luthuli, is what did the A.N.C. really want the individual to do? --- I have already indicated, My Lord. 20

It was left entirely to himself? --- My Lord, in the light of what I have already said, it could be left to the individual.

Now, what I want to know is, if that was the way removals were going to take place, how did the what did the African National Congress think industrial action throughout the Union would do to the removal on a particular day? --- I think My Lord, the Crown there forgets this, that in that whole situation of course the government had already indicated that it was taking a strong hand, so that My Lords, I wouldn't say that 25 30

the African National Congress would think in terms of single policemen. Already there were indications from the State that they were going to take a strong hand.

But how could industrial action on the day of removal have effected the removal? --- In this manner 5
My Lord, as we visualised the situation. I think I have already said this, that the government would most likely concentrate its forces in this area. And in order to assist indirectly in the situation and avoid an concentration, there would be that industrial action. I have 10
already given the purpose of that.

Why did you want to avoid the concentration of police in that area or of government forces? Why did you by industrial action want to avoid strong government forces in that area on that day? ---My Lord, surely 15
avoiding a concentration of government forces there on that day in my view would certainly be in the interest of our stand against people being removed.

How, Mr. Luthuli? --- I don't know that I can reply to that. 20

But you must? You must reply to that? ---
But that is what I have already indicated to you just exactly what we expected.

You expected that if you had industrial action on that day, the police or the government forces 25
sent to that area would be smaller in number? --- Yes, then you would not have concentration.

Now how would that assist your campaign against the removal of the people from Western Areas? How would a smaller government force in that area on 30
that day have assisted your campaign against the removal?
--- Well, our hope would be, I think the national hope would

be that possibly the removal would not be carried out.

Why not? --- I am afraid I don't know that I understand the question.

You don't understand the question? --- I don't understand the question "Why not". I have already 5 . indicated that the hope would be that if you had fewer forces there, the government might be persuaded not to carry out the scheme. What else can I say beyond that? I don't know.

You thought that if the government was 10 faced with the position that they had to send a smaller force to the Western Areas, they wouldn't attempt to remove the people at all? --- They would not.

Can you think of any factor that would persuade the government not to proceed in those circumstances? 15 Was it dangerous? --- Dangerous in what way?

Was it dangerous for the government to try and remove the people with a small force? --- No, it would not be dangerous to remove them with a small force. There was no danger at all. I mean from our point of view there 20 would be no danger. From our point of view there would be no danger at all. But, as I said, you would expect the government might be persuaded not to carry out the scheme, at any rate even if only temporarily.

For what reasons? Can you suggest any 25 reason why the government would be persuaded to desist from the scheme if they could only send a small force of police? --- My Lords, I must really confess that I don't quite follow the Crown there.

BY MR. JUSTICE BEKKER : 30

Well, the position is this. You indicated what you - the A.N.C. expected people to do? --- Yes.

Not to go voluntarily? --- Yes.

That if a policeman said "go", and even indicated that he might use force, the individual then would have to go and the A.N.C. would be satisfied. That is how I understood you? --- Yes, and then I can only say of course, My Lords, it would rest with the individual also.

X BY MR. JUSTICE RUMPF :

If I may just take that up. You say it may rest with the individual? --- Yes, in the sense that ...

You mean it may rest with the individual to forcibly resist? --- No, No, My Lord. What I meant, the individual might not even indicate an unwillingness, he might just simply go right away. But our expectation was he would indicate unwillingness, and then when force comes, we would expect him - well, he has demonstrated already.

X BY MR. JUSTICE BEKKER :

Now you stated that you hoped that an industrial action on that day would result in a lesser concentration of government forces in that area? --- That is correct, My Lord.

Now what Counsel for the Crown wants to know, is this, why did the A.N.C. or whoever it was who organised this campaign, why did they desire to have a lesser concentration of forces on that day? What is it they visualised? --- My Lords, I am expressing two points there, namely (1), that they could visualise, that the government might be persuaded or might halt, even if at any rate temporarily. But then also, My Lords, I think that one has got to think that in the context of the action throughout the country, which would - one would

expect, persuade the government, not only just the fact that you have got fewer policemen, in the Western Areas, but the fact that throughout the country you had these demonstrations, the government might be persuaded at any rate, even if only temporarily, to halt them. 5

BY MR. TRENGOVE :

So that the main purpose of the industrial action then would not really be to decrease the number of government forces going to the Western Areas, but would be merely to impress upon the government the seriousness of the situation. Is that so? --- Both. 10

X BY MR. JUSTICE RUMPFER :

Well, the difficulty is this, Mr. Luthuli, Counsel asked you if the A.N.C. visualised the possibility of reduced government forces, available for the removal, by industrial action, why did it think that a reduced government force would assist the people? The people who were about to be removed? --- My Lords, in this whole general picture, I find it difficult to ... 15

Well, the argument will simply be that if the A.N.C. wanted to reduce the forces of the government in the area concerned, they were expecting violent action and the smaller the government forces, the less chance for the government to score a success by violent action? What other - may I put this to you, have you got any other reason why the A.N.C. wanted the government forces to be reduced? --- Well, My Lords, I think that it is correct, I think that the observation of My Lordship there would be correct to ... 20 25

No, I don't want to....? --- No, no, I appreciate that...

I am saying that if you say - if you say you

don't understand the question, then the Crown may leave it at that, and it may argue at a later stage that the only reason why the A.N.C. wanted a reduction in the forces was because it expected a violent clash, and it didn't want the government forces to be concentrated in that area. That will be the argument? --- My Lords, I was going to say this that in a situation like that, several factors may come in, some of them you may have thought of specifically, others you may not have, specifically thought of them at the time. But, from our experience My Lord, we certainly had come to realise that when you have a concentration of large government forces, then insofar as pressure on that area becomes great, I think one can't rule out a greater possibility of violent action, -The greater the concentration of government forces, My Lord.

BY MR. JUSTICE BEKKER :

Do you suggest that the more government forces are present, the higher the degree of a possibility of violence? --- My Lords, I would say so. I would say so, personally.

Well, wouldn't it be the converse? Assuming you have fifty thousand policemen all armed, and two hundred africans unarmed, as opposed to two hundred armed policemen and ten thousand Africans. Where is the greater risk of violence? --- No, My Lords, I think that the...

You see, I don't understand you? --- Let me explain myself. My own view - let me put it on a personal basis, - is that where you have a large concentration of police, I think that even control on the police does become a bit difficult, and anything is

likely to start off than when you have a smaller number,
My Lord. I think in that sense.

BY MR. TRENGOVE :

Mr. Luthuli, you have now given three
reasons why you wanted industrial action on that day. 5
The first is that you wanted a smaller government force
there? --- So that they are not concentrated there, yes.

That would assist in the removal? That
would assist in the resistance to the removal? --- That
is correct. 10

The second is that you wanted to, by your
industrial action, dissuade - persuade the government to
desist from this scheme? --- That is correct.

And the third was that you wanted to avoid
a clash on that day, and that with a smaller police force 15
a clash would be avoided? --- I would think so.

Are those the three reasons? --- Those are
the reasons I can think of now, My Lord. I don't say
that we specifically sat down and discussed the reasons,
but as I view the situation, that is what I feel, My Lord. 20

Now Mr. Luthuli, this campaign against the
Western Areas, as far back as March or April, 1954, the
National Executive Committee of the African National
Congress decided to take over the conduct of that cam-
paign? --- That is correct, My Lord. 25

And from that date the planning would
have been done at national level? --- That is correct,
My Lord.

And in deciding to take industrial action
throughout the country on the day of removal, the 30
National Executive Committee must have been persuaded to
do so for certain reasons? Do you agree? --- That is so.

Now these reasons that you have mentioned, were they the considered reasons of the National Executive Committee in deciding to embark on industrial action throughout the country on the day of removal? --- My Lords, I cannot recall the details of the discussions, but in 5 general it would be so. I don't remember now to say now when we discussed this and that, that came up, I can't recall. But in general that would be so.

If you merely wanted to bring pressure to bear on the government to desist from this scheme, why did 10 the day of industrial action have to coincide with the day of the removal? Why didn't you decide to take industrial action sometime before the day of removal to impress upon the government that they must desist from this removal scheme? --- My Lords, firstly we would have 15 announced of course the day, it would be known by the government that on such and such a day we would do this, that would be know. And that knowledge alone would probably persuade the government.

X BY MR. JUSTICE RUMPF : 20

I don't follow, would you just repeat that?
--- I said, My Lord, that we would have announced ...

The A.N.C. would have announced the date of industrial action? --- No, we would have announced that we were going to take industrial action on that 25 day, so that the government would be aware. It wouldn't be this that industrial action would just simply spring up with the government not knowing, and I was saying to the Crown, My Lords, that with that knowledge, the government might - now the Crown was saying to me, why 30 did you do it on that day, we were merely saying if the government should persist to remove on that day, then that

would be the day when industrial action would be carried out.

Did you announce any plans for industrial action on the day of removal? Did you announce beforehand that you were going to take industrial action on 5 the day of removal? --- My Lords, I wouldn't recall whether there was any statement made, but I think that as I indicated in my evidence chief if I am not mistaken, the situation in the Western Areas, insofar as we could get information, was such that in fact we were never in a 10 position to be ready, so that the question of our announcing or not announcing to me could not arise. I think I did indicate - our report there would indicate that we were not so well informed of what was taking place insofar as the Western Areas was concerned as regards the people 15 of Western Areas, and therefore we never in fact did carry out that. Of course, there is also I think - I was thinking now of the factor that the postponement of the removal - but the main point is, as our report indicates was that we were not so sure what the situation 20 was in Western Areas, because of poor reports that we got.

But how would the taking of the industrial action depend on the situation in the Western Areas?

Under what circumstances would you have embarked on industrial action? --- My Lord, assuming - I have got 25 to say assuming, assuming the situation was that in the Western Areas people generally were willing to go. I mean well, supposing reports that came to us that people in the Western Areas on the whole want to go, there would have been no point, I think, My Lord, in my 30 view of taking industrial action. I just don't see the point.

If people were willing to go, you would not have taken industrial action? --- Personally I wouldn't see the point.

And was the position this that you couldn't determine from the information you got whether or not the 5 people of the Western Areas were willing to go? ~~Yes~~ Yes, I think the reports, which you probably have, will indicate that there really was a stage when we just didn't know. We had no reports to put us in mind as to the mind of the people. At one time the report would indi- 10 cate that the people - that the position was at a low ebb insofar as the people are concerned.

Mr. Luthuli, in 1954 in the middle of 1954, the African National Congress expected that the Western Areas Removal would result in a violent clash between the 15 people of the Western Areas and the government forces? Is that correct? --- No, My Lords, no My Lords, that was not the expectation of the African National Congress at all in that regard. But My Lords, I have repeatedly said, the possibility is always there, but it was not the 20 expectation that there will be violence.

Did you take up the attitude that the government was trying to provoke a violent clash in the Western Areas? --- Oh no, oh no. I have repeatedly said in this Court I never challenged the right of the 25 government to enforce its laws, it doesn't matter how harsh those laws might be. In my view and in our view, the government of the country has got a right to enforce.

What kind of clash did you expect in the Western Areas? --- My Lord, we did expect a resistance 30 from the people, we did.

What kind of a clash did you expect? ----

My Lords, I have already indicated to the Crown the possibilities where you have two groups, the government is enforcing its laws, and an unwillingness on the part of the people. Surely a situation like that does represent a clash? An unwillingness of the people on the one hand not to go and the government trying to enforce. 5

BY MR. JUSTICE RUMPF :

Is the position this, that the A.N.C. in 1954, expected a certain amount of resistance with the possibility of violence, and no more? --- That is so, 10

x My Lord.

CASE REMANDED TO THE 12th MAY, 1960.

COURT ADJOURNS.

COURT RESUMES ON THE 12th MAY, 1960.

BY MR. MANDELA :

My Lords, there was a discussion yesterday between us and Mr. de Vos, the leader of the Crown team. He outlined to us steps which the Crown in collaboration with the police and gaol authorities had taken in order to provide proper facilities to enable us to consult. Now according to Mr. de Vos, with the exception of Saturdays and Sundays, these premises are available every day after Court hours until half past four in the afternoon. The gaol authorities have made available a special cell, which will be accessible to all the non-European male accused, and this cell will be available from five until eight o'clock at night. He further informed us, My Lord, that arrangements would be made to bring us to Court at about eight o'clock in the morning. This means that whilst the present witness is under cross-examination these premises might be available to us for five hours a day. Now bearing in mind that the facilities available to us in gaol, it is possible at least in theory to have about eight hours a day for our consultation and preparation. Now we have carefully mapped out the field to be covered in preparing the case, and it is our considered opinion My Lords, that we need at least ten hours a day to do this. Your Lordships will remember that the record of this case is a long one, covering about forty volumes. There are thousands of exhibits which we have to read. The first difficulty my Lord consists in the fact that as soon as the present witness finishes giving evidence, the Court will sit until four o'clock in the afternoon, which means that there will only be thirty

minutes available in the afternoon, which - for joint consultations amongst the Accused. Now in regard to the special facilities provided for us in gaol, I can only say My Lord with the greatest of respect, that the attitude of the authorities has been absolutely outrageous and shocking. Your Lordship will remember that on the 26th of last month when Defence Counsel withdrew from the case, Your Lordships suggested that a room be made available in gaol where all the Accused could consult together. The Crown undertook to investigate the position and to do everything in their power to assist the Accused in preparing their case. On the 27th of last month Mr. Trengove announced that a room had been made available in gaol to the male accused for consultation, and that the Accused Levy would have access to this room. On the 2nd of this month we complained to Your Lordships that no proper facilities were provided for us by the authorities to enable these consultations to be held. Your Lordship the Presiding Judge had no doubt that proper seating accommodation would be supplied by the authorities. The Crown also made the undertaking that they would ensure that chairs would be provided. I have no doubt Your Lordships would be shocked to learn that up to yesterday not a single chair has been provided to enable us to use this so-called library.

BY MR. JUSTICE RUMPF :

Yes, but that was because there was a new arrangement. That was because it was arranged that the Accused could consult here.

BY MR. MANDELA :

No, My Lord. On several occasions I discussed the matter with the Crown, I have a discussion

with Mr. Trengove last week, pointed out to him that we required the chairs in the special library provided for us. I made a representation to the authorities in gaol for these facilities every evening, and up to yesterday nothing had been done.

BY MR. JUSTICE RUMPF :

As I understood the position, the arrangement was that the Accused would be entitled to consult here.

BY MR. MANDELA :

Well, My Lord, a very - in a very firm tone we were told by the authorities that we could not use these premises beyond half past four. As Your Lordship will recall - suggested that we could use these premises as long as we liked, and we were told that day that we could not use these premises beyond half-past four.

BY MR. JUSTICE RUMPF :

Did you then want to use it for a longer period?

BY MR. MANDELA :

Your Lordship, we made it clear to the authorities on the very same day - we made it clear to the police authorities as well as the Crown that on that day we wanted to use these premises up until eleven o'clock at night, and as a matter of fact we were assured by the Court sergeant when we raised this matter immediately upon the adjournment, we were assured that that would be arranged. It was only at about three o'clock that day when we were informed, the same day, that these facilities would not be available to us beyond half past four.

BY MR. JUSTICE RUMPF :

Now what day was that?

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BY MR. MANDELA :

On Monday, this Monday.

BY MR. JUSTICE RUMPF :

Up to Monday you did not want the premises until eleven o'clock at all?

BY MR. MANDELA :

On the contrary, My Lord. Before Monday we had indicated to the Court sergeant that we would require the premises beyond half past four, and as a matter of fact I think the Thursday we were told - we were requested to stop at four o'clock. On Friday, we were requested by the Court Sergeant that his men would not be available on Saturday because there was a University Rag, and they had to be on duty there, and we appreciated his difficulties and because we wanted to cooperate, we did not use it on Saturday. It is quite clear, My Lord, that we have made it clear both to the police as well as to the Crown that we required these premises as long as it is possible under the circumstances, and we indicated to them that we would like to use them on Monday up to eleven o'clock. Now on Monday sir, when I discussed the matter with Mr. Trengove, we were told that we had to stop here at half past four, the facilities in gaol would then be available to us between five o'clock and seven in the evening, and I might mention, Your Lordships, that when we reached gaol, we requested permission to use this cell. We were locked up, no explanation was given, and we were not taken to this cell. This has happened three times, sir. We make a special request to use these facilities, and the gaol authorities, without any explanation whatsoever, failed to take us to this special library. Now, it is clear to us sir, I mean we don't know what is going

on in the minds of the police and the gaol authorities, but what is going on in our own mind we know, Your Lordship. It seems clear to us that there is a deliberate attempt to place fetters around us and to make it difficult for us to prepare and to conduct our Defence. Your Lordships, ^{we} were also informed by the Crown that in all future consultations in these premises, members of the police force will remain inside the Court to ensure that we do not escape. Now, Your Lordships will remember that last week on Monday the Court expressed the view that it was desirable for these consultations to be held in the absence of members of the special branch. It is quite clear, sir, that that precaution not only related to the special branch, but to members of the police force as a whole. Now, on Monday sir, in the afternoon, a police captain came here and told us that he wanted to post his men inside these premises whilst we were having consultations. We pointed out to him that it would be most improper for him to do so, and we drew his attention to the fact that Your Lordships had expressed the view that it was desirable for us to consult in the absence of the police. Notwithstanding that, the police officer told us that he would post his men and it was only when we told him that we would immediately stop consultation and walk out that he desisted from doing so. Nevertheless, he told us that in future, when we consult here, police would be present inside these premises, and indeed yesterday members of the police force were present in this Courtroom during consultations. Now My Lords, the whole position is very distressing to us. It is not usual for members of the police force and gaol authorities to act in defiance of

the express wishes of a Court, and we feel that the whole position must immediately be investigated. We find it difficult to prepare and to conduct our case under these conditions.

BY MR. JUSTICE RUMPF :

Mr. Mandela, when did the Court suggest that you would have the premises here available for consultation amongst yourselves? Was that Monday a week ago?

BY MR. MANDELA :

Yes, that is correct.

BY MR. JUSTICE RUMPF :

Monday a week ago this Court suggested, having heard the troubles about the cell in the gaol, and having heard the suggestion that this court may be suitable, the Court suggested that the consultations be held here until such time - well, at that time the gaol authorities indicated that you could come back until eleven at night. Now on that Tuesday of last week, did you have consultations?

BY MR. MANDELA :

We have had consultations here every day, sir, without exception, every day last week.

BY MR. JUSTICE RUMPF :

And then the further trouble arose, and you mentioned this on this week Monday? And then I suggested you talk things over with the Crown. Now was there any trouble about consultations during the whole of last week?

BY MR. MANDELA :

Oh yes. It was made clear that we couldn't go beyond half past four.

BY MR. JUSTICE RUMPF :

Did you want to go beyond half past four?

BY MR. MANDELA :

Yes.

BY MR. JUSTICE RUMPF :

Why didn't you mention it to this Court?

BY MR. MANDELA :

Well, Your Lordship, we thought that arrangements could still be made.

BY MR. JUSTICE RUMPF :

Well, if it was suggested Monday a week ago by the gaol authorities that you could stay here as far as they were concerned until eleven at night, and on that basis the Court made the suggestion. Now you say that last week you wanted to consult for longer hours than half past four, and you were not allowed to do so?

BY MR. MANDELA :

That is correct, Your Lordship.

BY MR. JUSTICE RUMPF :

On what day was that of last week?

BY MR. MANDE LA :

Well, from the very first day we were allowed to consult here, we raised the question specifically with the Court sergeant that we wanted to consult until 11 p.m.

BY MR. JUSTICE RUMPF :

Now if that was so, why didn't you mention it last week?

BY MR. MANDELA :

Well, Your Lordship, as I say, we firstly - firstly we don't want it to be raised, these complaints, in this Court. We raise this complaint because we feel that the position has gone too far, and we feel that the matter must then be placed before the Court. But we have, not to raise this matter, and to discuss this matter both with the Court sergeant as well as with the Crown,

as much as we could, to see to it if a solution can't be arrived at. And at Monday we limited ourselves to raise it, the question of the facilities in gaol..

BY MR. JUSTICE RUMPF :

But that wasn't your trouble then. Your trouble was that you couldn't hold your consultations here until late in the evening. You follow the position? The Court's position was that it was suggested that this Court take the place of the gaol for consultations until eleven at night, so that any special facility, apart from reading, any special facility for consultation in gaol fell away because you could use this building here until eleven o'clock at night. On that basis the suggestion was made, that is why this Court didn't go into the question of any gaol facilities any more, apart from reading of course, that is a different matter. Now if that was conveyed to the Accused, and if the Accused found it impossible during that week to sit later because the police interfered with them or the gaol wanted them back soon, er why didn't you notify us straight away?

BY MR. MANDELA :

Your Lordship, in the first place, we have been dealing with the Crown in regard to the question of rearranging these facilities. Now the Crown knew last Monday that we could not use these facilities before half past four. Now I take it also that Your Lordships' wishes to the gaol authorities could only be conveyed to them through the Crown, and the Crown knew that these facilities would not be available to us indefinitely, as had been the desire of the Court, and one took it for granted that they therefore would convey to the gaol authorities that facilities which were meant to be available for us in the evening would then become

available. And as I say, My Lord, we have been discussing the matter with the Crown, and we didn't think it imperative on our part to raise all these difficulties to the Court, because we still entertained a hope that we might come to some arrangement with the Crown, as indeed - and yesterday, My Lord, we wanted to raise the matter, but then Your Lordship suggested that there should be a further discussion between ourselves and the Crown, and we took advantage of that opportunity and had discussions with the Crown. It is because these discussions now have completely broken down that we feel compelled that we should raise this matter again.

BY MR. JUSTICE RUMPF :

That is quite right, the Court expects you to mention this if the negotiations break down. Did you mention last week to the Crown that you were not entitled to stay here later than four o'clock?

BY MR. MANDELA :

Yes, that we conveyed to the Crown. I conveyed that to the learned prosecutor Mr. Trengove, last week.

BY MR. JUSTICE RUMPF :

And you wanted to stay longer here?

BY MR. MANDELA :

Yes, My Lord. We also told the Court sergeant specifically about it.

BY MR. DE VOS :

My Lord, first of all I am informed by my learned friend Mr. Trengove that no complaint was lodged with him last week because the fact that consultations could not be continued in this Courtroom until eleven o'clock at night. He was aware that the consultations

stopped at 4.30 but he was not aware that the Accused insisted on consultations later than that in the Courtroom. Furthermore, My Lords, as far as consultations in the Courtroom are concerned, the police have informed the Crown that the position is this. There are standing orders which oblige them to keep an eye, to be in view of a person detained by them and in their charge, and they are unable to make any other arrangements on that particular point. But it has been arranged, as far as this Courtroom is concerned...

BY MR. JUSTICE RUMPF :

Well, the first point is this. The original idea of the Accused being allowed to consult here until as late as eleven o'clock if they want to, can that not be put into practice?

BY MR. DE VOS :

My Lord, the position is that that emanated from the gaol authorities. As far as they are concerned the Accused can be brought back to gaol at eleven o'clock at night. But the difficulties do not arise with them at present. The difficulties arise with the security arrangements made by the police and they, I understand, have the duty of locking after and being in charge of the Accused until the moment when they are taken back to the gaol. So there the difficulty arises My Lord, and I am informed by the police that they are unable, unfortunately, they have investigated the position very thoroughly, and the assistance of their senior local officer, they are unable to undertake that charge beyond - after 4.30 daily. In other words, after 4.30 the police have to convey the accused back to the place of detention and then it is again a question of the gaol

authorities providing certain facilities in gaol as far as they are able to do so. As far as the consultations in Court are concerned, My Lord, may I explain, the police as I have said have those standing orders as to how they should keep within view, though not within ear-shot of those people in their charge, and they have arranged, they are quite prepared to abide by this arrangement, to have men posted at the one end of the Courtroom only, the furthest end, as far away as possible from the persons consulting, the accused or whatever other persons may be with them for the purpose of consultation.

BY MR. JUSTICE RUMPF :

Well, the point is this, after this witness the hours available to the Accused for consultation in these premises will also be considerably shortened. Well now, we shouldn't go on the basis of this witness only of course. What are the other arrangements tendered at the moment?

BY MR. DE VOS :

The other arrangements are approximately as set out by Mr. Mandela, except for the fact that on Saturdays joint consultations can be arranged too.

BY MR. JUSTICE RUMPF :

Well, he excluded Saturdays and Sundays. We are concerned about the ordinary daily programme.

BY MR. DE VOS :

As far as the daily programme, excluding Saturdays and Sundays as concerned, the daily programme could start at eight o'clock in the morning, with the Accused being brought here at eight o'clock, and allowed consultations in the Courtroom....

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BY MR. JUSTICE RUMPF :

Well, we must put it on the basis that if the police want to supervise the Accused in these premises, then the only purpose for which they can use them is for looking at the documents and making notes. They really can't consult properly.

BY MR. DE VOS :

My Lords, with respect, I submit that they can consult ...

BY MR. JUSTICE RUMPF :

In whispers? It is impracticable, Mr. de Vos. The point that I am after is this, first of all the Accused will have the opportunity in the early hours of the morning, from eight to nine or a little longer, to examine documents if they want to, under the supervision of the police, in these premises. That they must be entitled to. Then on the assumption that we have other witnesses who may be kept longer in the witness box than the present witness, we may adjourn at half past three or four, it depends. We may adjourn at half past three in order to enable the accused further opportunities to study documents in the premises here. Now, is it correct that thereafter this special cell will be made available in a proper condition? With proper lighting and benches and chairs?

BY MR. DE VOS :

Yes, I undertake that, My Lord, that will be done.

BY MR. JUSTICE RUMPF :

Well, we don't want any further complaints about that cell, and you had better look yourself at this cell. Now in regard to the hours. It is suggested that

they are entitled to consult for three hours, from five to eight in that cell.

BY MR. DE VOS :

May I perhaps, before Your Lordship proceeds mention also the lunch hour. During lunch hour lunch will be brought to the Accused here by the gaol authorities, so they will have that time available too for any consultations they may wish to have amongst themselves.

BY MR. JUSTICE RUMPF :

Well, is it possible to add another hour to that period in the evening in the cell?

BY MR. DE VOS :

May I be allowed to investigate that position. I have asked the gaol authorities...

BY MR. JUSTICE RUMPF :

It seems to us that for consultation purposes, four hours every day would seem reasonable, from five to nine.

BY MR. DE VOS :

My Lords, I will investigate whether the possibilities exist of adding a further hour.

BY MR. JUSTICE RUMPF :

One should go on the basis that the Accused have very little time to consult during the day here. What they are entitled to do is they are entitled to study the documents here. They must realise then that there is at least one police officer inside this room. Is the point that he must see them? It is impossible then for him not to hear, because if they speak just in the ordinary way, they will be heard. If they are in a group - you can't consult in whispers.

BY MR. DE VOS :

My Lord, my personal impression is otherwise, but Your Lordship may be correct on that point. My personal impression was that ...

BY MR. JUSTICE RUMPF :

It is quite different if you have Counsel and one client sitting in that corner and the police officer in this corner, then he can consult without being heard, but it is quite different when you have a group of people who talk about things.

BY MR. DE VOS :

My Lord, I am informed that there is a standing committee of about five or six of the accused who really do the consultation work.

BY MR. JUSTICE RUMPF :

It doesn't matter, they have got to have the Accused here and they have got to talk and they shouldn't be hampered, they shouldn't be afraid to talk if they want to. I am putting it on the basis that they won't be able to consult properly if there is a police officer, even in the one corner. But they will have all the time available to study the documents. That leaves for consultation purposes the lunch hour and as we would suggest from at least five to nine in the evenings. Is there any reason why it shouldn't be from five to nine?

BY MR. DE VOS :

My Lord, I am afraid it is very difficult to know what the attitude - what the administrative difficulties of the gaol authorities are before that sort of request is put. I have begun with two hours, the hours from five to seven, and at my request these

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have now been extended from five to eight. I know that certain special arrangements had to be made to enable the gaol authorities to do that, administrative arrangements. I am prepared to intercede again and see whether it is possible to add a further hour. From the point of view of convenience of course I understand the position. From the point of view of administrative difficulties I don't really have the full knowledge of all the data that may effect the position, and I would like to enquire.

As far as the facilities in the gaol cell itself are concerned, I have been informed that yesterday morning that matter was again pertinently raised, because as far as the Crown team is concerned, no complaints were certainly brought to my knowledge at any time that the consultants were not allowed to go into that cell, as I heard this morning. This is the first time I have heard this morning about their not being permitted to consult during the evenings in that particular cell. For that reason I raised the matter yesterday again, or as far as I am concerned, for the first time with the senior officer in charge, and he explained to me this morning that purely for administrative reasons he was not able yesterday to cope completely with the situation, but he gave the undertaking before Court this morning that conveniences and facilities will be installed in that room, and I will certainly personally inspect the position there as Your Lordship suggested. My Lords, may I add a further point. I am informed that at no time has there been any security officer near the Court when consultations were in progress, it has only been members of the uniformed police who execute their duties in the ordinary way they usually do, I merely mention that

for the information of the Court.

BY MR. JUSTICE BEKKER :

But even so that is undesirable.

BY MR. JUSTICE KENNEDY :

Mr. de Vos, if there is any difficulty about chairs, can't those benches be used as a temporary measure?

BY MR. DE VOS :

My Lords, I don't expect any further difficulties on that score.

BY MR. JUSTICE RUMPFER :

Well, remember that the lightning must be put in order and the seating accommodation, and the sanitary arrangements must be put in order and the accused must be able to enter the cell when they want to have consultations during those hours.

BY MR. MANDELA :

My Lord, there is just one more point. We have already told the Crown that our next witness is Mrs. Joseph. Now we can only consult together with her in these premises, My Lord, and unless special facilities can be arranged...

BY MR. JUSTICE BEKKER :

Well now, you have heard all the difficulties the Crown has mentioned. Have you any suggestions as to how the difficulties could be overcome?

BY MR. MANDELA :

Well, My Lord, in the first place, whilst appreciating the difficulties of the Crown, in view of the fact that the gaol authorities especially have no objection to us returning to the gaol at a later hour, it seems to me that special arrangements can be made at

least while we are preparing the evidence of Mrs. Joseph, to give us further extensions to consult in these premises.

BY MR. JUSTICE BEKKER :

You have heard Counsel for the Crown say that they are up against standing orders in the police force. I don't know whether we can override those standing orders, I don't know what the position is.

BY MR. MANDELA :

My Lord, I quite appreciate that, but in my respectful submission, notwithstanding the standing orders, it should not be difficult if we get the co-operation of the authorities concerned in this matter. It should not be difficult...

BY MR. JUSTICE BEKKER :

That is true, but now from the practical point of view, as I understand the standing orders, the accused must be within eyesight of some member of the police force. Now how do you suggest that one could comply with that requirement and still enable you to have a free consultation?

BY MR. MANDELA :

My Lord, there could be a number of shifts as far as the police authorities are concerned.

BY MR. JUSTICE BEKKER :

How do you mean shifts?

BY MR. MANDELA :

My Lord, I can't take the matter any further.

BY MR. JUSTICE BEKKER :

Well, you see, you leave us in the air. You can't take the matter any further, and you appeal to

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us, I would like you and the accused to consider the position how we can help you.

BY MR. JUSTICE RUMPF :

Your main difficulty at the moment is consultation with Mrs. Joseph. Now Mrs. Joseph, if she gives evidence, will give evidence as an accused person on her own behalf.

BY MR. MANDELA :

Your Lordship, she is not necessarily giving evidence on her own behalf, not necessarily.

BY MR. JUSTICE RUMPF :

Of necessity she is giving evidence for her own behalf, and as a Defence witness. Now is it necessary for all the Accused to consult with her?

BY MR. MANDELA :

No, not all. We have made the point very clear, sir, that there are only a few of the Accused who are working.

BY MR. JUSTICE RUMPF :

I have no doubt that if a special request is made for special consultation with a few of the Accused with Mrs. Joseph, that that could be arranged.

BY MR. MANDELA :

Your Lordship, we have made that request specifically, we raised that specifically with Mr. de Vos yesterday.

BY MR. JUSTICE RUMPF :

How many of the other accused would like to consult with Mrs. Joseph?

BY MR. MANDELA :

About five. At this stage.

BY MR. JUSTICE RUMPF :

Yes.

BY MR. JUSTICE KENNEDY :

Mr. Mandela, have you tested the position insofar as audibility is concerned? If you sit at the top there in the gallery and if the policeman stays here - have you tested that?

BY MR. MANDELA :

Your Lordship, as a matter of fact, we made precisely that suggestion in an endeavour to solve the matter amicably, but we understood that the standing orders do not permit that type of arrangement. The police had to be downstairs here with us. And then the other difficulty My Lord, is this, that we tried yesterday to speak in whispers, but it is easy to forget during the consultation, and you speak loud...

BY MR. JUSTICE KENNEDY :

The question of whispering cannot be entertained. You might test it, a few of you, I don't know whether it will work, if a policeman is stationed in one corner perhaps and five or six of you in the other corner. I don't know whether it will work, but it may be worthwhile considering.

BY MR. MANDELA :

I understood the position, My Lord, we have been working on the tables here, and we ourselves did suggest at one stage that - because the policeman has been sitting in this area where the Registrar is, and we did suggest that it might be proper for the police officer to sit at a remote corner at the back, and we were told that it was necessary for the police officer to be in this area, and as far as we are concerned, My Lord, we have made every possible suggestion.

BY MR. JUSTICE RUMPFER :

Anyway, Mr. de Vos, it ought to be possible

to arrange for a consultation of a few of the Accused with Mrs. Joseph.

BY MR. DE VOS :

I'll see what possible arrangement can be made, My Lord.

BY MR. JUSTICE RUMPF :

Well, they have now informed you that the next witness is Mrs. Joseph, so that should take priority.

BY MR. DE VOS :

They have just now done so. Prior to this stage we have been mentioned a number of witnesses from time to time, and Mrs. Joseph has been mentioned as one of the possible witnesses. This is the first time that we have received definite information that Mrs. Joseph is intended to be the next witness.

BY MR. JUSTICE RUMPF :

Well, the point is now that you know that, and consultation with her therefor ought to take priority as far as arrangements are concerned.

BY MR. DE VOS :

I'll see what can be done about that position. May I say, My Lord, that as far as seating accommodation in the Courtroom is concerned, the police have suggested that all these tables could be moved for purposes of consultation to the far corner at the back of the Court, - on the point that Mr. Mandela has just raised, as far as keeping away from the policeman as far as possible is concerned, that apparently - that suggestion has not been followed up.

BY MR. JUSTICE RUMPF :

Mr. de Vos, consultations amongst the Accused in this Court in the presence of a policeman will

give rise to endless complaints.

BY MR. DE VOS :

Yes, My Lord, this is not really meant as a further argument in favour of consultations in Court, but on the point that has been raised by Mr. Mandela that that has been suggested and apparently not acted upon.

BY MR. JUSTICE KENNEDY :

Well, at any rate, if the Accused do want to consult in Court, then I think they should be allowed to consult - to try it out, perhaps in one corner, perhaps in another. If they do want that, perhaps you will give them any assistance.

BY MR. DE VOS :

I certainly will do so.

BY MR. JUSTICE RUMPF :

Mr. Mandela, do you want to say anything? The Crown says that it is now for the first time known that - it knows for the first time now that Mrs. Joseph will be the next witness, her name was mentioned amongst others as possible witnesses, but this is the first time they hear that she will be the next witness.

BY MR. MANDELA :

Your Lordship, I can only say that it is quite possible that the learned prosecutors have genuinely and sincerely forgotten the details of the discussions which we have had with them. I discussed this matter personally in the first instance with the learned prosecutor Mr. Trengove, and I told him quite distinctly that Mrs. Joseph was the next witness, and Mr. Nokwe and I discussed the matter again only yesterday, and in this particular case it is difficult to find to explain on what basis Mr. de Vos could have forgotten that, because

it was only yesterday and we mentioned specifically with a committee of five persons, that we were now working on the evidence of Mrs. Joseph, who is the next witness. We said it very specifically. It is quite possible, My Lords, that because of pressure of work they have forgotten, but I find it completely strange, because the conversation took only place yesterday.

ALBERT JOHN LUTHULI, under former oath;

CROSS-EXAMINATION BY MR. TRENGOVE CONTINUED :

Mr. Luthuli, the African National Congress, as part of its liberatory struggle, decided during the period 1953 to 1956, to embark on a series of campaigns, which include the campaign in connection with the Western Areas Removal Scheme. That is correct, is it not? --- That is correct. Of course, to include specifically the Western Areas was a decision, as I indicated, later taken.

All these campaigns had this one object, the achievement of the aims of the liberatory struggle. They were all directed towards that one object, is that not so? --- Well, I would say there are two aspects, My Lords, to it. There is a general aspect of achieving the aims of the liberatory movement, and sometimes it would be connected with a specific issue, My Lords.

Now Mr. Luthuli, these campaigns were organised by means of propaganda and by means of agitation and by means of organisation? --- That is correct, My Lords.

And the propaganda and agitation in support of the campaigns took the form of the publication of literature and the holding of public meetings? --- That is so, My Lord.

And the literature and the meetings were intended to enlist the support of the masses for these campaigns? --- That is so, My Lord.

Now, Mr. Luthuli, in 1954 the African National Congress decided to start what it called the Resist Apartheid Campaign, which embodied campaigns against certain specific statutes? ---- That is correct, My Lord. 5

Bantu Education, the Native Resettlement Act, the Pass Laws, the Group Areas Act, the Suppression of Communism Act and anti-trade union measures? --- That is correct, My Lord. 10

And of these, the campaign in connection with the Western Areas was to be the first major campaign? --- Well, My Lords, I don't know whether I would say it would be the first major campaign. I don't think I would say so. I don't think that priority was given to the Western Areas in that sense. As the Crown will recall, it was a local matter first, and then later the national came in. I don't think the question of priority when the programme of Resist Apartheid was arranged was made. 15 20

No, in actual fact, this was going to be the first major clash with the government? - I don't know.

Well, we will refer to the documents later on. Now Mr. Luthuli, I want to put a few questions to you in connection with this campaign against the Western Areas. In your evidence-in-chief you gave certain facts on - from which you sought to justify the attitude of the African National Congress in connection with this campaign. Now I don't want to go into the merits of those facts, but I just want to put certain other facts 25 30

to you. In the Western Areas, 58,000 people were involved in this removal scheme, is that correct? --- It was a large number, My Lords, I wouldn't recall the number.

That is what your documents say. Mr. Luthuli, of the 58,000 people that were to be removed, how many of those people actually enjoyed freehold rights in Saphiatown? --- I wouldn't know the number. 5

About two per cent? --- I wouldn't contradict, I wouldn't know the number.

A very small number, is that correct? --- I think the number would be small of the landlords, and if the Crown says 2% I wouldn't contradict that. 10

Let us leave it at a very, very small percentage. And of the 58,000 people that were to be removed, many of those people lived in overcrowded conditions? You used to get about forty people to dwelling, fourteen or fifteen people living in a single room? Is that correct? --- There again My Lords I wouldn't know. I accept that there might have been overcrowding. I can't say specifically the overcrowding was to this degree, I don't know, but I know that there were tenants. 15

Yes, they were tenants, and you also know that there was overcrowding to a very large degree? --- Yes, I have heard of that, My Lord. I have no personal observation of it myself, but I think I have heard that there was overcrowding. 25

You visited the Western Areas yourself? --- I didn't undertake inspection. I mean, as I say, from a casual look, you visit a place, I have not taken any real inspection to find out. 30

Did the National Executive Committee inform itself of the actual position in the Western Areas? ---

In what way?

In connection with the living conditions there? --- My Lords, I don't know that it did. I would observe that of course the local people, that is the Executive Members who are living there, would at Executive 5 meetings now and again give information, but I don't specifically recall.

You don't recall whether these facts were ever placed before the National Executive Committee? --- I don't recall. 10

If they had been placed, you would have recalled it? --- I think I would recall that.

You see, Mr. Luthuli, I am just looking at the factual position. You had thousands of people living there in miserable conditions, overcrowding, bad housing, 15 squalor, and slum conditions, do you agree? --- I have already said, My Lords, that one in general accepts the position to have been so.

Now, Mr. Luthuli, the purpose of this campaign was to get the 58,000 living in Western Areas, to 20 get them to resist removal to Meadowlands? --- That is correct, My Lord.

And throughout the Union you were seeking support for this campaign? --- That is correct, My Lord.

And the way in which you set about getting 25 your support and persuading the people to resist removal, was by holding public meetings in the Western Areas and elsewhere in the Union? --- That is correct. My Lords, may I just ask a question. Do you mean holding public meetings in the rest of the Union specifically for Wes- 30 tern Areas or as part of the Anti-pass campaign?

As part of the campaign against the Native

Resettlement Act? --- Well, My Lords, actually we expected that in the various areas people would in their programme, that is the provinces, would from time to time acquaint people about the Western Areas.

With particular reference to Western Areas? 5

--- It was an important issue, My Lords, I won't debate that point.

And these meetings at which the people were being told to resist removal of Western Areas, were being held with the knowledge and approval of the National Executive Committee? --- That is correct. 10

It was part of their campaign? --- That is correct, My Lord.

Do you know what was said at these meetings in connection with the resistance that the people had to offer? --- My Lords, I do not know what was said at the meetings, because it would be almost physically impossible for me to know, I would merely go on the basis of - I would assume that they would carry out the agitation, the education on the basis of our programme, and policy. 20

And I take it you would also assume that the speakers would be guided by statements that you for instance make in connection with this campaign? --- That would, My Lords, but I mean the main thing would be, people know policy and they would have a general knowledge of the situation there, no doubt utterances of leaders would assist what one might say maybe others. 25

You see, Mr. Luthuli, I want to put it to you that the object of the African National Congress in regard to the Western Areas was to build up the resistance of the people to such a point that their resistance would result in a violent conflict between them 30

and the state? --- My Lords, one, it could never be in the light of our policy, and then 2, I have indicated already in my evidence that the question of bringing the Western Areas to a National level was an action taken much later. I have emphasised it. 5

Mr. Luthuli, you don't reply to my question you see, that is why I interrupt you. My question to you was that the African National Congress wanted to build up the resistance of the people to such a point that it would result, their resistance would result in a violent conflict between them and the state? --- No. 10

And this excuse of yours that the National Executive only came in at a very late stage is nonsense, Mr. Luthuli. The National Executive came into this matter in April, 1954, at the latest? --- My Lords, it is no excuse and it is no nonsense, because it is a fact. 15

When did the National Executive take charge of this campaign? At what date? --- My Lords, I think I will accept - I don't recall the actual date, but it was somewhere in the course of the year. But it is quite true that after that date the National Executive as such whilst aware of what was taking place in the Western Areas, had not made it national on that basis. It was only at that time, My Lords, that the National Executive felt that the situation required the National Executive to come in, and I repeat that is a fact. My Lords, it must be accepted that as an organisation, even at the time when the National Executive as such had not brought in the national element, obviously the leaders throughout the country would express the general view of objecting to Western Areas Removal. So I have no doubt that even 20 25 30

before that date you would find pronouncements by leaders, you would find expressions in the press by leaders, but for the national to officially come in, My Lord, it is not nonsense, because they came in at the date specified, it is a fact, and it is no excuse. 5

Well, Mr. Luthuli, let me just refresh your memory. The decision of the National Executive Committee to take over the supervision of the campaign in connection with the Western Areas, was taken at a meeting in Natal on the 17th April, 1954. Is that correct? --- I think 10 that would be about correct.

And when was the removal? It was in 1955, February, 1955. So that your decision was taken about nine months before the time, you started supervising it? --- That would be correct. 15

And then on the 8th May, your Executive - on the 8th May, 1954, your Executive, together with that of the South African Indian Congress, South African Congress of Democrats and the South African Coloured People's Organisation, approved a plan of campaign known 20 as the Resist Apartheid Campaign? --- That would be correct, My Lord.

And, those organisations fixed June 26th and 27th as the Western Areas Day of Campaign and Solidarity throughout the country? --- That would be 25 correct, My Lord.

And it was in connection with that day of solidarity that you made a statement which was issued in the form of a press release, do you remember? --- My Lords, I don't remember. One issues so many speeches 30 that I don't specifically remember, but it is possible.

Now I find it difficult to understand on what

basis you say that the National Executive took charge of this campaign only at a fairly late stage? --- My Lord, I think the position of the Western Areas is this. At the time, by April, which was the date when specifically the National Executive came in, the agitation for the 5 Western Areas had long started. I cannot fix the date. I mean the question of Western Areas started when the United Party was in power, they didn't push it very far, and when the Nationalist Party came into power, then they started to indicate and show that they are pushing, 10 so that the agitation of the people in Western Areas didn't begin that year. It has a long history back, My Lords, so that I am correct in saying that it was only at that specific date when National Executive once decided to come in into a campaign that had long been in existence, 15 My Lords. I think that is a fact. The Johannesburg City Council discussing the matter, it has a long history.

We know all about the long history. When did the African National Congress decide to embark on a specific campaign in connection with the Western Areas 20 Removal Scheme? -- Just as you have stated.

When? On what date? --- In April, 1954, that you mentioned.

The National Executive, yes. Now when did any other body of the African National Congress decide 25 specifically on a campaign in connection with the Western Areas? --- My Lords, I would not know about the provincial section of the African National Congress in Transvaal, because naturally the Transvaal Executive was interested, and I wouldn't be able to give the details of their 30 activities. There is no doubt about it that the Transvaal Executive and the Transvaal section of the A.N.C. - was

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