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strong action against the people and the people suffered and some died."

"Mr. Luthuli, the Congress movement held the view that on the day the situation in the Western Areas was so tense that if one person had thrown a stone out of his turn there would have been a violent clash between the police and the masses. If one untoward incident had occurred, there would have been a violent clash? --- I don't know whether that was Congress view, but there was the possibility. I have never heard of that view in Congress, it could be, I have never heard of it, but it could be, the possibility could be thereof course, I don't know that it was Congress view, I am not sure about it". And then it is put to him, My Lords, the question is put to him : "Can I put it to you that your conclusion that you were defeated in the Western Areas, that you suffered a defeat was based on this failure of somebody to resist to a point where there would have been a bloodbath? --- That is the Crown's conclusion, I do not accept it." And then he is asked, what was the wise guidance the African National Congress gave that avoided a bloodbath on that day? And then he says that the wise guidance was that the people had to conduct the struggle on the lines indicated by the African National Congress. My Lords, we will ask Your Lordships to consider this wise guidance of the African National Congress, as to whether it was a factor which avoided a bloodbath or contributed towards the possibility of it. Now this whole question, My Lord, the attitude of the individual, was left in the air by the African National Congress Executive, but it was not left in the air at the meetings. And say - and

we say My Lords, it was being held out to the people that they were to resist to the bitter end, but what the African National Congress failed to tell them was what the A.N.C. would do on that day to assist them in really physically opposing the removal. The people were let down, that is what it really means. Now My Lords, there is another issue in connection with the Western Areas Campaign and the purpose of it, and that becomes relevant in considering the whole scheme of resistance, and that is why did the African National Congress want industrial action on a country wide scale concurrently with the removal? My Lords, one is not concerned here with the question of whether Industrial Action was actually carried out or not. The question is not whether they actually succeeded in carrying out industrial action on a country wide scale. The National Executive issued the instruction that there should be industrial action concurrently with the removal. Why was that, My Lords? Was it just to draw the attention of the public to the removal and to their suffering, or was it part and parcel of the plan to make it impossible for the government to effect the removal, to make it impossible for the government to maintain law and order, as a result of their activities. Now the unusual feature My Lords about Luthuli's evidence is this, that he says the purpose of the industrial action was to draw off the forces which could be used in the Western Areas. That was one of the purposes. In order to avoid a concentration of government forces. That is what he says in his evidence. My Lords, one has this rather unusual feature in Luthuli's

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evidence that in their reports they say they wanted a concentration of government forces, and here the mouth-piece of the African National Congress comes along and says it was our object to draw away forces and not to have a concentration. But in the course of being examined on this issue, and in order to justify his statement that they wanted to draw off forces, Luthuli makes this point in answering questions on this issue. He says that a concentration of government forces increases the danger in the Western Areas, increases the likelihood of a clash.

So whatever way one sees it, My Lords, if they did want a concentration there, it is quite clear, it must be to anybody, it is quite clear what Luthuli says, that the danger of a clash is then increased by that industrial action. My Lord, Luthuli is questioned about this, Volume 63 of his evidence, at page 13442 of his cross-examination, he is asked :

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

So that as Luthuli sees it, My Lord, it is in order to assist the people in the Western Areas who are faced with a concentration of government forces, that they are embarking on industrial action in order to draw off forces from that area. At line 12 he is asked :

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

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

"But you must, you must reply to that? --- That is what I have already indicated to you, just exactly what we expected". And at line 28 :

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

"Now how would that assist your campaign against the removal of the people from the Western Areas? How would a smaller force in that area on the day assist your campaign against removal? --- Well, our hope would be I think, the national hope would be that possibly the removal would not be carried out". And then he is pressed on that, and at page 13443, line 10 he is asked :

"You thought that if the government was 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 give any factor that would persuade the government not to proceed in those circumstances? Was it dangerous? --- Dangerous in what way?"

"What is 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 would be no danger. From our point of view there would be no danger at all. But as I said, you would expect that the government might be persuaded not to carry out the scheme, at any rate if only temporarily".

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

And then His Lordship Mr. Justice Bekker, at line 30 puts the following question :

"Well, the position is this. You indicated what you, the African National Congress expected people to do, not to go voluntarily". Page 13442, line 2 : "But if a policeman said go, and even indicated that he might use force, the individual would have to go and the A.N.C. would be satisfied. That is how I understand you? --- Yes, and then I can only say of course My Lords it would rest with the individual". And then His Lordship the Presiding Judge asks a question in this regard. Then His Lordship Mr. Justice Bekker, at line 19 says :

"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".

"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 that they visualised?"

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--- My Lords, I am expressing two points there, namely one, that they could visualise that the government might be persuaded or might halt, even at any rate temporarily, but then also My Lords, I think one has got to think in the context of 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 if temporarily to halt." Then line 7 on page 13445 :

"So that the main purpose of industrial action then would not really be to decrease the number of forces going to the Western Areas, but to impress the government with the seriousness of the situation, is that so? --- Both." And then, My Lords, this question is followed up, and at page 13446, line 1 it is put to Luthuli :

"I am saying that if you say you don't understand the question..." - b. His Lordship the Presiding Judge - "... then the Crown may leave it that, and if they 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 that in a situation like that several factors may come in. Some of them you may have specifically - thought of specifically. Others you may not have specifically thought of at the time.

But from our experience we certainly had come to realise that when you have a concentration of a large - of large

government forces, then insofar as pressure on that area becomes greater, I think one cannot rule out a greater possibility of violent action. The greater the concentration of government forces, My Lords."

And then His Lordship Mr. Justice Bekker poses the question to him as to whether a smaller government force wouldn't increase the risk or the possibility of violent action, that is at lines 18 to 22, and he says no, he think that the larger force. And then at 13447, line 4 it is put to him as follows - his views are summarised in cross-examination by the Crown :

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

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

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

"And the third was that you wanted to avoid a clash on that day and with a smaller police force 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".

And then at page 13573 line 18 :

"Is it correct to say that it was - that it was the African National Congress that really compelled the

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government to embark on a fullscale military operation in order to remove the hundred and fifty families on the 9th of February?" That question is repeated, "Is it correct to say that the African National Congress through the conduct of its campaign compelled the government to make use of two to three thousand armed police to remove the people? --- My Lords, my own feeling is that that would be a factor which would influence the government". And then he is pressed, at line 29 :

"But Mr. Luthuli, did the African National Congress claim that by its action it forced the government to use two thousand policemen to effect the removal? --- I think My Lords we did make that claim, and to that extent the campaign was a success", and he says that is correct. And then at line 3 :

"Why did the African National Congress want to compel the government to use force? to effect the removal of a hundred and fifty families? --- The African National Congress was not primarily concerned with getting the government to make use of a large force, it was however very much concerned with carrying out its campaign to a point where the government would reconsider. Now the African National Congress realised of course that if the government found it could not reconsider, it would in the normal course of things use force."

"Mr. Luthuli you know very well that the African National Congress was doing its best to get the government - to compel the government to resort to force and intimidation to remove the people", and then that question is discussed with Luthuli.

Now My Lords, what is this attitude of Luthuli?

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In the light of the A.N.C. policy and in the light of the A.N.C. documents? My Lords, he is trying to avoid the issue of the industrial action, he is trying to avoid the effect of the concentration of the large number of forces. My Lords, we submit that it is clear from the documents of the African National Congress that not only did they want as large a concentration of police in the Western Areas, but My Lords, they wanted to combine that with an industrial action throughout the country in order to further increase the danger of a clash and a bloodbath which was inherent in the campaign in the Western Areas. We have it, My Lords, we have it from the evidence of Luthuli which we dealt with yesterday, that an industrial action in itself being a higher form of action, is a form of action which could very easily involve the whole country in a serious situation, being a conflict between the forces of the state and the people engaged in the nation wide strike. Now what is the position in 1954, when the Executive meets? The position is, My Lord, that they hold the view that the government wants to create a bloodbath in the Western Areas. They want to aggravate that position, My Lords throughout the country by concurrently embarking upon a nation wide mass strike throughout the country simultaneously with that dangerous situation which was developing in the Western Areas.

COURT ADJOURNS.

COURT RESUMES.

MR. TRENGOVE :

My Lords, there is just a further passage in the evidence of Luthuli in this connection, where he is asked about the fact that the government were compelled to use these large - this large force to remove the people, whether that was regarded as an achievement by the African National Congress. Those questions, My Lord, occur at page 13612, line 3, where the question is put to him, "Mr. Luthuli according to the official African National Congress attitude, the presence of a large force of police assembled at Sophiatown on that day was due to the fact that the indignation and hostility of the masses in the Western Areas had been aroused to such an extent that the government was compelled to use three thousand police to effect the removal. Do you know that that was the African National Congress attitude?" And he says that that is correct.

"Do you know that the African National Congress regarded that as one of its achievements? --- That is correct." Now My Lords, what his admission amounts to is that the hostility and the indignation of the masses in the area had been aroused to such an extent that that situation compelled the government to use the three thousand police.

My Lord, by whom had their hostility and indignation been aroused? We submit, My Lord, that the evidence clearly shows that that had been done by the African National Congress, and My Lords, that it is for that reason that they claim the credit of having placed the state in that position.

My Lords, at 13612 this question is dealt with and it is put to Luthuli that they cannot compel - they cannot attack - it is dishonest to attack the government for having provoked the situation, if it was the indignation of the people which had been aroused to such an extent that the presence of that force was considered necessary. That is further pursued, My Lord, at page 13613, page 13615, 13629. And then, My Lords, Luthuli is asked, about certain passages that appear in the documents, Exhibit A.162, and at page 13629, line 27, he is asked about this employing of more force and employing more forces. Line 27 :

"Mr. Luthuli, to me your explanation is unintelligible. You see, in the previous paragraph it speaks of using more force, and in that paragraph it speaks of using more forces". Your Lordships will remember, A.162.

"So that I want to put it to you that one can only put one construction on that, and that is that the people must resist so that the government must employ force to remove them and that they must resist to compel the government to use a greater number of forces, men, armed men, to remove the people. Can you suggest any other possible construction on those two paragraphs? --- No, I have no other possible construction to suggest, other than the one that I suggested, what I have already indicated, My Lords, is that if it is intended to mean the purpose of organising is to force the government, that being the primary aim, then I wouldn't agree with that. But I don't know that the other point of view would be altogether, as the Prosecutor tries to say,

namely this was that as we used, as the resistance grows, from past experience, the government would be - well maybe in the normal course of things, use more forces. Now that we set out to invite the use of more forces, as I say I wouldn't agree with the other construction." So that, My Lords, his attitude on A.162, he tries to get past the consequences of that, - he says although that would be the effect of our conduct, that isn't our primary object. Our primary object is to resist removal in the Western Areas. That would have the effect of compelling the government to use more and more forces, but he says that cannot be held against us, because that is not our motive, that is not our primary object. My Lords, that is an entirely wrong approach, entirely unsound, because they know that that is the consequence, and they know that that consequence endangered the position.

MR. JUSTICE BEKKER :

Is that a consequence deemed, or is that the consequence in law?

MR. TRENGOVE :

That is the consequence, My Lords, deemed.

MR. JUSTICE BEKKER :

Rebuttable?

MR. TRENGOVE :

My Lords, not rebuttable. Their documents state that as their object, to employ more forces and to...

MR. JUSTICE BEKKER :

Yes, that is your submission on the documents. But if this witness says well, I really intended that, one has got to consider that.

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MR. TRENGOVE :

My Lords, one is not concerned with what the man's motive is, one is concerned with what he intends, and if his intention is to build up the resistance to a point where the government has to use more and more force, although he says that is not my primary object, that is his intention, in law.

MR. JUSTICE BEKKER :

Yes, but what I want to know is, one question of intention, he is deemed to intend the consequences of his act, but it is nevertheless open for an accused to present such fact or facts, if he can, which displaces that presumption.

MR. TRENGOVE :

My Lords, in a given situation, I suppose he would be entitled to do that. Now My Lords, Resha was also questioned on this matter of the forces being used, and Your Lordship will remember Resha said that he and Tambo were responsible for A.162, the report of the Secretaryat on the Western Areas, he said he supplied the facts and Tambo drafted the report. Now in Volume 81...

MR. JUSTICE BEKKER :

Doesn't he say it is rather an overstatement of the position?

MR. TRENGOVE :

Portions of it, My Lord, I will be dealing with that. May I just explain, My Lords, in certain cases we don't embark at this stage on a criticism of the personal position of a particular witness, because that will have to be dealt with when his position is

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considered. I take his evidence, My Lord, for the moment for what it is. At page 17034, Volume 81, a paragraph is put to Resha : "The aim should be to make it necessary for the authorities to employ ever more and more forces to effect the removals? --- That is so". Line 26b:

"I put it to you that is what you wanted, that the forces used, the two thousand police, the government should be placed in a position of having to increase the forces, that they were going to use, to effect the removal with safety to the state? --- My Lords, we wanted the government to use even more forces than two thousand, and the safety .." - page 17835 line 1 - "... the safety of the state as such was not endangered but the safety of the Nationalist Government was." And then His Lordship Mr. Justice Bekker, at page 17035, line 3 puts the question :

"Why did you want the government to use more forces, bearing in mind that the display of force by the government, is, as I understand it, regarded as an act of provocation on the part of the government vis-a-vis the Africans? --- That is so, My Lords." His Lordship then puts the question :

"You see, it strikes me this way, if it is regarded as an act of provocation, would not the object of forcing the government to use greater forces be a greater act of provocation? --- My Lords, the position is this as we see it, if the government is forced to employ even more and more forces to effect the removals, it meant to us that four thousand or even five thousand police would be sent to Sophiatown, and that the public, the people of

South Africa would fight against such a thing. I have no doubt that the European electorate would say to the government, look that is the position in which you want to effect the removal, we refuse that so many police should be necessary and concentrated in one area to force people who are unwilling to go. Negotiate with the people". So that he doesn't My Lords, reply to the question put to him, he avoids the question. And My Lords, he can't reply to it, because the consequence of having more and more forces is clear on their own documents. They regard two thousand people there as an act of provocation by the government, intending a bloodbath. Now they say, we want four thousand, five thousand police. It is a greater act of provocation, it is a greater danger to the safety and security of the state. But he avoids that and says well, the effect of that would be to influence the electorate, they wouldn't stand such a large force being employed to remove people. But My Lords, the position is really much worse. This A.162 the Report from the Secretariat, after this first campaign, where the two thousand police were employed, in the passages read into the record at pages 811(a) and 811(b), under the heading of What Must Be Done, My Lords, it is not only as Resha says that in carrying on the campaign they want to compel the government to use even more police, four thousand or five thousand police in the "estern Areas. In addition to that, My Lords, under What Must Be Done, is that the people must be prepared for industrial action at some appropriate time. And My Lords, in addition to that they say the mistake should not be made of presenting industrial action to the people

as a decisive action which can solve their problem, but rather as a tactic of obstruction and resistance which can lift the struggle to a higher level. So that we submit, My Lords, on this question of industrial action, Luthuli's explanation is entirely unsatisfactory, this whole explanation of his wanting to draw off forces. He knew that such action could and would increase the danger to the safety and security of the state, already inherent in the Western Areas Campaign, and faced with this Report, the Report of the Western Areas on the industrial action, he is really trying to ease his way out of the natural consequences of the policy of the African National Congress.

Now My Lords, another factor which is relevant in regard to the Western Areas, is that the African National Congress were aware of the fact that they would be calling upon the people in the Western Areas to embark on that campaign, whether the resistance to removal was legal or not. It was of no consequence to them whether the people in the Western Areas in resisting were acting legally or illegally. And that they knew, My Lords, that the state would be entitled to enforce the removal by law, and that their actions would not only hamper the state in the administration of its laws, but it would also hamper the safety and security of the state. That My Lords, appears firstly from the evidence of Luthuli, Volume 69, 11763, at line 8 Luthuli is asked what he knew about the legal position, and he says "Speaking personally, My Lords, I must say I wasn't aware of the legal position". At line 15, he is asked, "Do you mean when the instructions were issued or the

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policy decided on in regard to the Western Areas, more particularly when it came to the actual date of removal do I take it you weren't aware of the fact whether the failure to remove on that date would be a criminal offence or not? ---- No, My Lord, I cannot say precisely. But I have a vague idea that it was not an offence. I think the position was that it would not be a criminal offence and the authorities would have to seek further powers to do so". And then he says they didn't - he doesn't know if the position was enquired into. Then in Volume 63, My Lords, page 13500, line 10, he is asked : "Mr. Luthuli, the African National Congress of course knew that the inhabitants of the Western Areas would be acting unlawfully if they refused to go after an order had been issued against them? --- That would be correct, My Lords." Line 15 :

"So that the African National Congress was prepared to incite the people to resist removal by illegal action? --- My Lords, the Crown may use the word incite, but the African National Congress made it quite plain that in the course of carrying out its campaign, in opposing laws, starting with the Defiance Campaign, it comes to a point where it violates the law. That is why the state has got to take action, I have said so several times."

"Yes, and if fifty-eight thousand people respond to your call and illegally resist removal, the law would be unenforceable against them, the state would be hampered in its enforcement of laws? --- That is correct". And he carries on, My Lord, with that topic until the end of that

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page, and also My Lords, at line - page 13501 he is asked, "If they resist removal and the state in enforcing its laws removes them forcibly, that situation may endanger the safety and security of the state, do you agree with that? --- I agree, My Lords, with may, but it is not an expectation in the light of what I have said several times." And then he continues, My Lords, with his attitude that he persisted in, he says well, although that is possible and although it may result, our position is that we carry on nevertheless. He is asked, My Lords, at 13501, line 18, it is put to him : "I am giving you an opportunity Mr. Luthuli of replying to that," - this question of endangering the state - "replying to it specifically. Did you or did you not realise that a campaign of this nature, organised on a national scale would endanger the safety and security of the state? --- My Lords, I have said several times, that there might be a possibility of the thing, but we don't start off by saying we intend that thing to come about. We work on the basis, as I have already explained in Court, and need not repeat, that certainly it was never in our minds to bring about insecurity to the state, but it is to bring the authorities to a position where they might retreat. We never start off with saying we are anxious to bring about the insecurity of the state. That is not our desire." Page 13502, line 1 : "Mr. Luthuli, whether you desired it or not, surely you must have realised that that type of action would endanger the safety and security of the state? --- I have said the possibility might be there, but we have two propositions. There is a possibility, but there is also

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the possibility that the authorities may give in. Why do you rule out the other possibility?"

"Would it be correct to say then that you would carry on regardless of that possibility? --- My Lords, we carry on our campaign".

"Regardless of that possibility? --- My Lords, we would carry on".

My Lords, also in regard to this campaign, it is the same attitude which they consistently adopt. There are two possibilities, it will not endanger the safety and security of the state, if the state gives in, if the state submits, if the state negotiates. But if the state persists in its attitude, it will be dangerous to the safety and security of the state. Now what kind of attitude, My Lords is that, to leave it in the hands of the state as to whether one's actions in fact endanger the safety and security. The test is, My Lords, is it inherent in the action that you take, quite apart from what the state may do, is it inherent that the safety and the security of the state would be endangered. And it is quite clear, My Lords, that it would. They are relying on the state to save a situation which they bring about. And that position, My Lords, is repeated by Luthuli, in Volume 64, at page 13639, line 4 :

"Mr. Luthuli, just finally, just subject to anything which you might have to say on the Western Areas Campaign just this, you will agree that a campaign like the Western Areas Campaign contemplated by the African National Congress and conducted to the extent set forth in that memorandum, that campaign would seriously disturb and impair and endanger the existence and security of the

state?" He says : "I have already expressed my point of view regarding that, but I think I had better repeat it, and it is this, that insofar the danger to the security of the state, the African National Congress doesn't work with that in mind. It works to bring stronger pressure on the government, and it has no intention to disturb - it has no intention, it has said so, of destroying the existence of the State".

And that question is repeated, at line 19, and also My Lords, at page 13640 line 1. My Lords, this matter is also dealt with by Resha, who seeks to distinguish between the state and the Nationalist Government in Volume 81, at page 17027, line 15. His attitude, My Lords, is as follows : "If there was a country wide strike, everybody staying at home and the government in those circumstances decided to move the people on the 12th, that would have created a dangerous situation, do you agree or don't you agree? --- I don't know what you mean by a dangerous situation. I don't agree to things I do not understand".

"A situation dangerous to the safety and security of the state? --- If by state you mean the Nationalist Government, which is a minority government, because to me a state is the Nationalist Government which controls the state, if that is so, then the security and safety of the state is always in danger, because it is a minority government ruling the majority of the people in South Africa by force." At page 17027, line 9 this proposition is also dealt with, and the methods that the government employs. "Mr. Resha, you wanted fifty thousand people to be in

Sophiatown on the day the government moved in to take away the hundred and fifty families," that was the stay at home in Sophiatown, fifty thousand people had to be there. "That was what you wanted? --- Yes".

"And you wanted that because you knew that the presence of two thousand police and the presence of fifty thousand people who had subjected themselves to your propaganda for months, could be the spark to set off a conflagration throughout the country? --- My Lords, we wanted the fifty-thousand people, not fifty thousand, fifty thousand people of the Western Areas to stay at home on Saturday the 12th. We did not want the government to send two thousand police. In fact the government did not tell us they were going to send two thousand." And he deals with this question, and he says "Had we made an arrangement with the government that fifty thousand people would stay at home and two thousand people would come, that would have started a conflagration, but here we were concerned with our methods of resisting, our own methods of resisting, and we made arrangements to defeat the government in using its brutal methods to effect this removal, and we succeeded despite the fact that we didn't know that the government was going to send two thousand people with a view to start a conflagration."

Line 3, page 17029 :

"Mr. Resha, I want to put it to you that you wanted to compel the government to bring as large a force as possible to effect the removal? --- It was My Lord our aim to compel the government to use as large a force as possible in order to demonstrate clearly that this scheme was not

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being done because the people were willing to be removed, but it was being done because the government wanted to do it against the wishes of the people, and they could only do that by bringing fully armed men to helpless and peaceful people". And then it is put to him that that may be regarded as a victory, and he says that the whole and the state of emergency was a bluff by the government.

Now My Lord, take this position of Resha. Why did they want fifty thousand people in the Western Areas that day? A hundred and fifty people were being removed, that they knew. They knew on the - towards the end of December the removal notices had been issued, they knew exactly how many people were going to be removed, they wanted fifty thousand people there on that day. They knew that the government was going to use a large force, - they might not have known two thousand, they might not have known the number, but they knew as far back as 1954, June 1954 on their own showing that the government was going to use force to compel the removal. My Lords, what does the presence of those people in that area on that day - why was it required? We say, My Lords, it is another indication of the attitude of the African National Congress that they were endeavouring to create a situation there which could give rise to a conflict, engaging large numbers of people, people from the Western Areas and the government. Because, My Lords, we say every incident of violence, every clash, every shedding of blood where the masses come into conflict with the government, to them is a stepping stone towards their liberation. They use and

abuse those incidents for those purposes - for their purposes.

MR. JUSTICE BEKKER :

How do you say we must deal with Resha's evidence about the volunteers, or are you going to deal with that? What the volunteers had to do on the day of removal. He suggested that they were there to see that the person about to be removed did not act violently.

MR. TRENGOVE :

Let me say here and now, My Lords, that we are going to ask the Court to find that on Resha's evidence that he was an untruthful witness. He was prepared, My Lord, in that witness box to say anything to avoid the consequences of his conduct.

MR. JUSTICE BEKKER :

But are you going to deal with your reasons later on?

MR. TRENGOVE :

With the question of volunteers in the Western Areas, yes, My Lord, as to why they wanted volunteers in that area on that day. My Lords, the campaign in the Western Areas they call it - we don't, My Lords, they call it the Waterloo of apartheid. That campaign was going to be a campaign in which masses of people were going to be used to make an act of parliament unworkable. Masses of people, not their own members, over whom they had no control. Masses of people engaged in illegal and unlawful conduct. My Lords, we say on the evidence of Luthuli that is quite clear, My Lords, - I am dealing now not with the objective, the natural consequences, but it is clear from Luthuli's own evidence that they saw the

possibility of violence in the Western Areas with that meeting of the forces, the masses on the one side and the forces of the state on the other. My Lords, Luthuli deals with what they - I am dealing now, My Lords, with that other document, T.E.T.50, it is that Press statement, and I want to illustrate, My Lords, what was contained in that statement were really the views and the knowledge of the African National Congress at that date. In Volume 63, at page 13450, line 13, Luthuli is asked about this, the condition and state of mind of the African National Congress in mid-1954. "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 people of the Western Areas and the government forces, is that correct? --- 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 an expectation that there would be violence". Then at line 22 : "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 have never challenged the right of the 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 a country has got a right to enforce". Now Your Lordship sees what Luthuli says in the witness box in 1960, it was not their attitude that the government was trying to provoke a violent clash in the Western Areas, and he tries to adopt this attitude, My Lords, that

they have always held out that the government, however harsh the laws may be, the government has a right to enforce them, and that one can't say that the government is provoking a clash it is - if it enforces its laws. Read that, My Lords, in the light of the National Executive Report, L.L.M. 81, under the heading Western Areas, where the National Executive in 1955 in a Report to the

National Conference said that the government had intended to provoke a bloodbath in the Western Areas. So Luthuli is asked at line 29, "What kind of clash did you expect in the Western Areas? --- My Lords, we did expect a resistance from the people, we did".

"What kind of a clash did you expect?" - page 13451, "My Lords, I have already indicated to the Crown the possibilities, when 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 a government trying to enforce.." And then His Lordship the Presiding Judge at line 8 :

"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, My Lord".

And then Mr. Lord, at page 13482, line 9, this document T.E.T.50 is put to Luthuli :

"Now Mr. Luthuli, I just want to refer to your statement, a document marked T.E.T. 50 and it appeared for the first time at page 3789 of the record, and it is alleged to have been found in the possession of Tshunungwa, it is dated the 29th of June, 1954." Then My Lords, this passage in that document to which I referred this

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morning is read out to Luthuli, and he is asked :

"Now just pausing there for a moment, this profound racial clash that you said the government was provoking, .." - then he asks for leave to look at the document, and he is asked at line 25 :

"Do you remember issuing a statement like this, Mr.

Luthuli? --- My Lords, I don't specifically recall, one has issued many statements, but I wouldn't deny that that wouldn't be a statement that I issued. I don't remember specifically this particular one." At page 13483, line 23 he is asked :

"Now what kind of clash was this going to be? Who was going to clash? --- My Lords, this is part of the whole of - the whole apartheid attitude of the government, My Lords, and the Western Areas as well as other actions of the government fitted into the picture, and no doubt the removing of the people in the Western Areas would disturb the feelings of the people in that area, and surely it would not improve race relations at all."

"And that would lead to a clash? --- My Lords, it would lead to a clash, yes". 13484, line 1 :

"A physical clash? --- No."

"What kind of clash? --- I have explained yesterday the view on clash. When you have, My Lord, afterall it must be accepted that you have a struggle of oppressed people that are pressing their case, and the government is also pressing its point of view, and in a situation like the Western Areas, surely you have an instance that where the government is now actually carries out, and the people are expecting opposition to it, it is a clash."

✓So you don't expect a physical clash? --- No, My Lords,

definitely not."

"And you didn't even think that the government wanted to bring about a physical clash? --- My Lords, one is repeating myself, and I said here and I say it in this connection that the government meant to carry out the removal, and it would use the laws at its disposal to do so, and we would expect that in carrying out those laws, he could use force. I have already said so."

"Yes, but Mr. Luthuli, did you expect the government and their action, did you expect that to result in a physical clash in the Western Areas? -- I did not."

"You didn't expect the action of the government in the Western Areas would result in a physical clash with the people? --- No, oh no, I am very sorry. If the people had in fact forgotten, they would have acted contrary to our policy, I have already explained myself."

We deal with that, and again My Lord, at page 13485, then Luthuli is faced with this document, L.L.M. 81.

"You see, Mr. Luthuli, I return to your statement, and in the 1955 Report to the Annual Conference in Bloemfontein, L.L.M. 81, in the National Executive Report under the heading Western Areas, it refers to the removal of the people on the 9th February and to the declaration of a state of emergency, and then the Report says 'Thanks to the guidance of the A.N.C. leadership a bloodbath was avoided'." It is put to him, "So that your National Executive says that the government intended to bring about a bloodbath in the Western Areas. Do you agree with that report? --- I agree, I agree, My Lords. One has got to explain why one says he agrees, we must take

the whole picture, because at that time, whilst one cannot give all details, it is true that the government had shown an indication that it was going to use force and statements had been made by Ministers clearly indicating that they were determined to use force."

And His Lordship Mr. Justice Bekker puts the following question, starting at line 25 :

"Mr. Luthuli, in your reply to the question when Mr. Trengove said you do not understand the question he repeated the question. Did you expect the government by its action intended to bring about a physical clash, and your answer was no. You expressed your agreement with this statement appearing in the report, 'thanks to the guidance of the A.N.C. a bloodbath was voided'."

And Your Lordship puts the question : "I find it rather difficult to reconcile the two statements unless you have an explanation". Now the explanation, My Lords :

"Well, My Lords, what I really mean in the first one was this, one didn't start off by saying that the government planned, because its intention was merely force, but its intention was to carry out the law, and it would use force in carrying out the law, what is what I meant in my first statement. My Lords, not that the government starts off by saying look, we would like to exercise force there and kill people. They start off by saying no, we will carry out what it is our desire to carry out and we will use force. In other words, what I was trying to say, My Lords, I am not suggesting that the government starts with the intention, - first with the intention, they say now look, we will kill those people, let us use

that as an occasion to do so, but they start off to enforce, and in that process they go to all lengths. That is what I mean. And then I say in this Report, that I hear the reading, the report indicates maybe in a superlative way that the government forces were in fact concentrated in large numbers there and the African National Congress played the role insofar as it tried to influence the people. That is my justification of that Report".

Now My Lord, what kind of an explanation is that? What kind of explanation is that, where they throughout the period 1954, Luthuli's statement, this document, Vundhla's speech on behalf of the African National Congress at the Anti-Apartheid Conference, dealing with this dangerous situation and this government, throughout that period, My Lords, their one theme is that the government is going to use force and violence. Now Luthuli's first wants to get past that, to create a good impression, you say My Lord, of course the government is entitled to enforce its laws and the government will do what is necessary for the enforcement, and then he is faced with this report, L.L.M. 81, in which they impute to the government an intention to create a bloodbath. The question is continued, My Lord, with Luthuli by His Lordship the Presiding Judge, at line 27, page 13486 : "You see, the report says that the government had intended to bring about a bloodbath, it says so? --- Well, I think My Lords, that is by (?) intention, this really it means that it started off first with that intention, then I would say if anything would be an interpretation, I wouldn't then agree, My Lords, but I am.." - page 13487 -

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"I am putting the other interpretation that by bloodshed and so on the government intended at all costs to go on with the scheme, it wouldn't matter even if there would be a shedding of blood, it would carry out its scheme, but not that the original intention was to start off, well we have an occasion of shedding blood. That is where I am trying to make a distinction, My Lords, that no doubt it would carry out its scheme even if it meant a large number of people being killed, I feel that is correct." The question was taken up by the cross-examiner, My Lord, line 12 :

"Let us just clarify this position a bit, Mr. Luthuli. You say that from the beginning the African National Congress realised that the government was going to carry out its intention of removing the people at all costs? --- That is correct".

"And from the beginning the African National Congress realised that in carrying out its intention the government would if need be resort to force and if need be also bloodshed? --- That is correct".

"When did the African National Congress/^{come}tc the conclusion that it was the intention of the government to provoke, to create a bloodbath in that area? When did the African National Congress form the view that the government intended to create a bloodbath in that area? --- Bloodbath in the sense of at all costs carrying on, bloodbath in that connection, at all costs carrying on, regardless agitation against."

His Lordship Mr. Justice Bekker at line 30 : "Then it must be from the beginning, whatever beginning means in this context, because you agree with this question put by

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counsel, namely you say from the beginning the A.N.C. realised that the government intended to carry out its removal? --- That is correct, My Lords."

Page 13488 : "At all costs? --- That is correct".

Now where are we now, My Lords, with Luthuli who says the government is entitled to enforce laws, I didn't think the government was going to provoke a bloodbath. Now My Lords, you get to the point where they say, from the beginning, Luthuli concedes, they realised that at all costs, including a bloodbath, if necessary. Then at 13488, His Lordship Mr. Justice Bekker puts the question at line 6 : "Well, then I am correct in inferring that the reference to the bloodbath in the sense mentioned by you, namely carrying out at all costs, was present to the mind of the A.N.C. from the beginning? --- That is correct, from the time the government indicated that it was determined to do so, it was present, My Lords. Now one must add on this My Lords, in an expression of this kind, that you don't get people for instance sitting down and saying now, if the government this, but it is a view generally held, definitely, it was a view generally held..." and his reply is interrupted, and the question was put to him :

"Can I then accept this position, Mr. Luthuli, that the A.N.C. realised from the beginning that the government seriously intended to carry out this scheme and would carry it out at all costs? --- That is correct", and the question was put to him further :

"That was the official attitude? --- Yes, My Lords".

And then he is asked, My Lords, on this Report of 1955, L.L.M. 81 by the Crown, at line 25 on page 13488 :

"And Mr. Luthuli, is that the explanation that you give to this passage that I quoted to you in your 1955 Report? --- As I have indicated, My Lords."

"I still fail to understand your explanation of how the National Executive could say that the government intended to create a bloodbath, if by that they merely meant that the government intended to carry out the law? --- My Lord, I can, I'll have to leave it at that, because I don't know that I can explain myself anymore".

My Lord, in the 1955 Report, they say the government intended to provoke a bloodbath. In 1960 in the witness box he says we mean they intended to carry out the law. Now My Lords, to them, on Luthuli's evidence, one can say the government provoked a bloodbath if you intend to convey to the people that they wanted to carry out the law. Now how can that be, My Lords? Where does the bloodbath come in, if the government merely intends to carry out the law? Therefore, My Lords, at line 3, page 13489, this questioning was continued : "There can only be a bloodbath, Mr. Luthuli, if the resistance of the people is built up to such a degree that they resist removal physically, and in no other circumstances could there be a bloodbath, do you agree? --- Well, My Lords, I must ask guidance in language, to this extent that if in carrying out the law the government is forced to shoot people, would that not be a bloodbath? Would it necessarily only be a bloodbath if the people responded violently also? I take it, my own understanding would be that that would be a bloodbath, if a large number of people would be killed in the process. That is my interpretation, I may be wrong, My Lords, I say it is a matter of language there."

What does that mean, My Lords? He says, you can have a bloodbath, if the government is forced to shoot people, if the government is forced to shoot, but My Lords, surely you can have a bloodbath if the government is forced to shoot people, but is that a bloodbath that the government intends to provoke? And that is what his report says, in 1955, that the government intended to provoke a bloodbath, and he tries to explain that away by saying that the government might be forced to shoot people.

At line 16 he is asked : "And you expected that a large number of people would be killed before the removal is complete? --- My Lords, when the government carries out its scheme you can never tell to what degree, if they start enforcing they will force. If the people show a desire not to respond, naturally the government would use force and the extent to which from past experience on the presence of the police, I think it is reasonable to expect that there might be a thing like that, quite reasonable". My Lords, pausing there for a moment, the government carrying out its scheme, he says, if the government are compelled to use force, he says from past experience the presence of the police might result in a bloodbath. My Lords, who wanted two thousand police there? Who wanted four thousand and even five thousand police there? Line 25 :

"Mr. Luthuli, who was building up that desire in the hearts and minds of the people not to respond to the government orders? --- The African National Congress. It may be the African National Congress. Incidentally, My Lords, I would say there were other groups agitating

against the removals, to a certain extent they co-operated with us, and to some extent they did not, but it was the African National Congress". And then, My Lords, at page 13490, line 1 :

"And Mr. Luthuli, if that is so, who was provoking the bloodbath, the African National Congress or the government? --- My reply to this, it would amount to this, that the African National Congress should never at all carry out any campaign, should never at all carry out its programme or try to resist apartheid." We are not going to be deterred, Luthuli says, from the prospect of a bloodbath, because if we have to be deterred by that, we will not be able to carry on our campaign. Line 11, page 13490, it is put to him that he is not answering the question, and at line 11 he says - it is put to him : "If the African National Congress knows that the resistance by a large number of people to the enforcement of laws would result in a bloodbath, - in bloodshed, and the African National Congress with that knowledge deliberately builds up that resistance, I put it to you that the African National Congress was provoking bloodshed - the bloodshed? --- I don't, I don't, because I have already said in this Court that the basis on which we work, My Lords, is the expectation, the expectation is that when there is strong opposition, the government could still be persuaded not to, I have said so several times, and therefore I refute, and don't accept the proposition that the African National Congress - that by their action the African National Congress would be provoking a - bloodshed. As I already indicated, My Lord, the Crown

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might just as well be suggesting that the African National Congress should not carry out its programme of trying to remove oppression". That matter, My Lords is continued at line 27, and also at page 13491. At page 13491, line 13, it is stated :

"Mr. Luthuli, I want to give you an opportunity, you knew that building up the resistance of 58,000 people towards the enforcement of a law could result in a blood-bath; you knew that the government was prepared to go to all lengths to enforce the carrying out of that law? --- I also hoped..." and his reply is interrupted by a question at line 19 :

"And with the knowledge - with that knowledge the African National Congress over a period of months conducted a campaign inciting the people to resist the implementation of the law, even at the cost of their lives? --- I also hoped that the agitation of the African National Congress, and not only the African National Congress, elements in the White population.." - he refers to them, "the Congress alliance, the Johannesburg City Council and other elements, we hoped that the government would still be persuaded, it was not just the agitation of the African National Congress, there were other elements totally opposed to it, therefore our hope was justified. But we had to carry out our programme of carrying and campaigning against, My Lords." And then at page 13492, line 2:

"Mr. Luthuli I challenge you to produce a single document or a single speech in which it is stated that you hoped by your propaganda and by your agitation in connection with the Western Areas, that you sincerely hoped that the government would desist from their scheme.

I challenge you to produce such a statement or such a speech? --- My Lords, I have already indicated my own view on this matter. You don't have to make a speech and say I am carrying out this campaign and I hope, the hope is always there. You agitate against a thing because you hope the person will stop that particular thing, and you don't have to be writing speeches and saying I hope, I hope". That matter is dealt with, My Lords, at line 15; page 13493 line 1, and at 13496 we refer to T.E.T.50 again, to the identity of the document, and he says that Tshunungwa was the National Organiser of the four bodies mentioned in that document, and Luthuli says that a press release issued on behalf of the four organisations would properly be in his possession as National Organiser. He says yes, it could be in his possession. And then, My Lords, certain specific passages in this document are put to Luthuli at 13497, line 8: "Mr. Luthuli, the next paragraph says that a campaign is being conducted to shift the government from its reckless, bloodthirsty, reactionary course, yet the government remains determined to carry out its plans. Now that would refer to, the bloodthirsty and the plans would refer to this removal," and he says "I think it would". Line 15 :

"And when you say that, the statement says that the Western Areas scheme is a test case, the government must be made to retreat by the united strength and determination of all - of South Africans of all races, was that also your attitude? --- That would be a fair and correct statement, and it would be a test whether the government

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would give heed to public opinion". At line 23 it goes on:
"And it goes on, the Western areas must be the Waterloo
of the inane racialiam of Dr. Verwoerd and his Cabinet,"
that is put to him, and his reply is - he wants to know
what those words mean. At line 29 : "It is stated that
the Western Areas Scheme was going to be the Waterloo
of the apartheid policies of the government", and he
says, "Do you mean Congress speakers in speaking generally
express those words." Then it is put to him that he used
those words, and says well, he won't deny it. He is
also questioned on the use that was being made of volun-
teers and he agrees with the statement in this passage -
this document that volunteers were going to play an impor-
tant part and that they would be expected to rise to
new heights, greater even than those during the Defiance
Campaign. That is at 13499, lines 4 to 6. Now My
Lords, there was another statement which was put to
Luthuli by the Accused Nokwe in re-examining Luthuli.
That was the Exhibit O.R.T. 66, and Your Lordships will
remember that O.R.T. 66 was the press statement that
was published by Tambo on behalf of the African National
Congress on the eve of the actual removal in Sophiatown.
Your Lordships will remember that the date of removal
had been anticipated, and on the 8th of February Tambo
issued a statement. This is put to Luthuli, and at page
13873, line 27, in re-examination, Luthuli is asked :
"Did this express the attitude of the A.N.C. in regard
to removal of the Western Areas", and he says it did.
And that statement, My Lords, inter alia, suggests
that if there were to be violence, in the Western Areas
on the day of removal, the government will have to accept

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the blame for that. Now at line 30, page 13873, questioned by His Lordship the Presiding Judge, arising out of this document : "What does this mean, Mr. Luthuli, any disturbance or violence that may occur will have been initiated by the government and its agents", and he says at page 13874, line 1 : "I think My Lords my interpretation of that will be, I think it means if the..." then the reply is interrupted : "Does it mean that there may be violence on both sides, but that it perhaps will have been initiated by the government? --- There is a possibility of violence".

"By both sides? --- Yes, a possibility. I mean my reading of it would be this, that there are possibilities of violence on both sides."

"Yes, it say that may occur, but in that event is the meaning of this that if there is violence by both sides, the government will have initiated it? --- Initiated in the sense of not showing any signs of abandoning the scheme".

"In other words, was there foreseen in this statement the possibility of violence if the government pursued its course? --- My Lords, I would say that that matter, not only in this particular case, but I think in the other cases, we realistically realised that you can get a development of violence". The Accused Nokwe then puts the question : "But in a situation, what is the attitude of the African National Congress, what instructions does it give to the people? --- The instructions of the African National Congress are always - of course are always not to be violent and even issued instructions to people who might be on the scene to use their influence

in the direction of calming down people who might be inclined in that direction."

"Now My Lords, that is the view of the leader, the President-General of the African National Congress. Now, My Lords, the attitude of his Chief Lieutenant in the Western Areas, Resha, in this connection. Page 16967, line 7, it is put to Resha on the question of illegality :

"Yes but you don't mind defying laws, even if it is illegal? --- We don't mind defying laws, but we do not justify it because we think we should, like N.I.C. We go into the matter thoroughly and make up our minds whether it is worth defying." Line 12 :

"Now Mr. Resha, when did the African National Congress realise for the first time that the government was determined to force through this scheme at the cost need be of violence and bloodshed, regardless of any consequence?"

That is the statement in T.E.T. 50. "My Lord, I am in difficulty in giving the date, as to the time when Congress realised that, save to say that the possibility of government using force and violence was always there.

We have known this government through its years of rule, and no less than three hundred Africans have been killed by the police at the time, and whenever they decide to do anything, force and violence is one of their main features." Line 24 :

"Would it be correct to say that as early as the middle of 1954, you realised that the government was determined to force through this scheme, regardless of the consequences, even if it required violence and bloodshed? --- I said it is correct to say by that time we did, because that is about the period when the government decided to

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embark on legalised robbery" - page 16968 -" on legalised robbery of the rights of the African people in the Western Areas by bringing into being the Native Resettlement Act! And then he is referred, My Lords, to the Exhibit T.E.T. 50, page 16970 :

"Did your organisation hold the view as early as June 1954 that the government was about to provoke a racial clash in the Western Areas? --- It has always been the main feature of this government to provoke racial clashes, it is one of its policies, main policies."

"And that the government would force it through even at the cost of violence and bloodshed? --- Certainly. My Lords, the paragraph which follows the two paragraphs read by the learned Prosecutor says," - and then he quotes the paragraph - "after saying the government remains determined to carry out its plans, is a clear case of apartheid regardless of consequences for the lives and happiness of our people, the next paragraph reads.." - this is Resha reading from it : "There can only be one answer from us, our campaign of opposition to the removal scheme must be increased tenfold and extended throughout the country. For us too the Western Areas is a test case. The government must be made to retreat by the united strength and determination of South Africans of all races. The Western Areas must be the Waterloo of the inane racialism of Dr. Verwoerd and his cabinet." And he adopts T.E.T. 50. Line 28 :

"Now Mr. Resha, this racial clash that the government was accused of wanting to provoke, that racial clash, would it be a violent clash? --- The government is always keen on a violent clash. As I have already mentioned, no less

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