

INDIAN SOUTH AFRICANS

in
Struggle for National Liberation

*Evidence of Molvi Ismail Ahmad Cachalia
in the South African Trial,
June 21-28, 1960*

Edited by: E.S. Reddy

INDIAN SOUTH AFRICANS
IN
STRUGGLE FOR NATIONAL LIBERATION

Evidence of Molvi Ismail Ahmad Cachalia
in the South African Treason Trial, June 21-28, 1960

Edited

by

E. S. Reddy

Foreword by

Anand Sharma

SANCHAR PUBLISHING HOUSE
New Delhi
1993

CONTENTS

Foreword

Introduction

EXAMINATION BY MR. KATHRADA, JUNE 21-23, 1960

CROSS-EXAMINATION BY MR. TRENGOVE, JUNE 23-28,
1960

RE-EXAMINATION BY MR. KATHRADA, JUNE 28, 1960

Foreword

In South Africa, the people have been engaged in a heroic and arduous struggle against a system of racial bigotry and oppression where, mindless violence perpetrated by the State has wreaked havoc on the innocent and the helpless, thus brutalising an entire people. Apartheid as a policy of institutionalised discrimination denied the fundamental human rights to the vast majority of the South African people. As a moral issue, it has outraged the conscience of the civilised world.

The Indian community in South Africa, though a minority, has played a pivotal role in the struggle for equality and justice for all the people of South Africa. Over the years, it has identified itself with the political mainstream and has enriched the social and political milieu.

Historically, the Indian immigrants came to South Africa as indentured labour and worked in pathetic conditions. However, through their innovative approach and hard work, they persevered and improved their social and economic conditions. Unfortunately, they soon became targets of attack and were discriminated against in a systematic manner. Disfranchised and dispossessed of its land and deprived of its basic rights, the community chose to defy the might of the racist regime. Drawing inspiration from the *satyagraha* of Gandhi in South Africa and the Indian national movement against British colonialism, it embarked on a non-violent struggle. Enraged by the Asiatic Land Tenure Act of 1946, the Indian Congress launched a "Passive resistance campaign" which marked an important milestone. The coming together of the African National Congress (A.N.C.) and the South African Indian Congress in 1947 provided a new impetus to the movement. The Xuma-Dadoo-Naicker Pact can be termed as a watershed in the democratic struggle.

Satyagraha in South Africa has been used as an effective strategy and is Gandhiji's common heritage for both South Africa and India. The 1919 Campaign of the ANC against pass laws was the first mass action shaped on the Indian struggle. The Indian *satyagraha*, also became a precursor of the "Defiance Campaign" of 1952 under African leadership. From then on, the Africans, the Coloured people and the Indians were moved by the common objective of achieving a non-racial and democratic society.

Despite brutal suppression and grave provocations, the Indian South Africans remained firm in their resolve to dismantle apartheid and have resisted unjust laws with exceptional courage, providing front ranking leaders to the liberation struggle. That Dr. Yusuf Dadoo is one of the three recipients of the *Isitwalandwe* - the highest ANC award - is an ample testimony to the contribution made by the Indian community.

Molvi Cachalia is one of those freedom fighters who remained unwavering in his struggle for equality and justice. Coming from a family which was deeply committed to the South African struggle, Molvi had studied only up to 4th standard in the Government School at Johannesburg before opting for religious studies at the prestigious Deoband University near Lucknow in India. The earlier influence on Molvi was that of his father, who was a close associate of Gandhiji. At a tender age of 16, he was shocked by the Class Areas Bill designed to segregate the Indians. During his stay in India (1924-1931) he came in contact with Gandhiji himself and was also influenced by the teachers at Deoband, belonging to the Indian National Congress and the *Jamiat-Ulema-i-Hind* who were associated with the Indian freedom struggle. Upon his return to South Africa, he was outraged by the 'Servitude Scheme' of 1938 and joined the Passive Resistance Council. From then onwards, he remained active in the struggle and alongside Nelson Mandela led the great 'Defiance Campaign'.

The evidence of the Molvi and his cross-examination by Ahmad Kathrada, himself incarcerated for 26 years along with Nelson Mandela, focuses attention on two great freedom fighters who dedicated their lives to secure for their people the right to live with dignity.

It is also reflective of the deep anguish and sense of injury caused to Molvi by racial discrimination. The testimony is revealing as to how the two used the opportunity of Molvi's evidence to expose the repugnant system of apartheid and effectively articulate the unqualified opposition of the Indian community and its legitimate concerns.

The testimony informs the readers of Molvi Cachalia's remarkable memory, astute political thinking and tenacity of purpose. It provides an insight on Mr. Kathrada's sound knowledge and understanding of the evolution and enactment of the discriminatory laws and their detailed interpretation by Molvi - who had no formal degree in law nor had English as his medium at education. Displaying admirable presence of mind in responding to the searching questions of Justices Kennedy, Bekker and Rumpff, Molvi emerged unscathed from the intense cross-examination of the Public Prosecutor Mr. Trengove.

This book, besides being of historical importance, also makes fascinating reading as it unravels the social and political realities in South Africa and recreates the events of the first half of the 20th century. It educates the reader about the injustices inflicted upon the Indian community and its principled struggle. The evidence also conveys the desire of the Indian people to enjoy equal rights and like any other community, lay claim to its right to land and housing and a life of dignity.

No book had so far catalogued all the events and laws specifically discriminating against the Indians nor accorded them the place they deserve in the history of the democratic struggle in South Africa.

For those who are interested in the South African situation reading this book will be an enriching experience.

The timing of the publication is significant as the transition process in South Africa has entered a critical but decisive phase.

For me it has been a privilege and an honour to have met both Molvi Cachalia and Ahmad Kathrada. Their personal experiences and informed appreciation of the ground realities have helped in enhancing my understanding of South Africa. It is therefore a pleasure to write this foreword for a book edited by Mr. Enuga Reddy. He is a friend who has consistently espoused the cause of the South African people and throughout kept the international community informed of their brave fight for a noble cause.

New Delhi
15th August 1993

ANAND SHARMA

INTRODUCTION

The evidence of Molvi I. A. Cachalia during the South African treason trial in 1960 constitutes a valuable source for the study of the struggle of the small Indian community in South Africa for its elementary rights, and its contribution to the national liberation movement in the country. But it has rarely been used by scholars and students as the record of the trial is not easily accessible and contains numerous errors of transcription and much irrelevance in cross-examination by the prosecutor.

I have condensed the evidence and corrected the numerous typographical and other errors in the record, as well as some glaring grammatical mistakes.¹ I have also checked most of the quotations and documents cited in the record with the originals, and added a few footnotes.

The evidence describes the enormous and escalating discrimination imposed by the successive white racist regimes against the Indian South Africans - as regards residence, employment, trade, property ownership, franchise etc., - and the constant efforts to force them to leave South Africa in desperation. It recounts the appeals, protests and resistance of the Indian community, and the organisation and methods of non-violent struggle.

It also emphasises the conviction of the authentic leaders of the Indian community, especially since the late 1930s, that the destiny of the Indians was linked to that of the indigenous African majority, which was even more brutally oppressed; and their efforts to forge an alliance of all the oppressed people, as well as democratic whites, in order to overthrow the racist order and build a democratic society.

The context of the evidence may be briefly recalled.

One hundred and fifty-six leaders of the liberation movement were arrested in a nation-wide swoop in December 1956 and charged with high treason. After a series of withdrawals of charges and acquittals for lack of evidence, thirty were tried from January 1959. In March 1960, when a State of Emergency was declared in the country, they were detained, as were numerous other leaders and activists. When the Court resumed on April 26, 1960, the accused contended that a political trial could not be properly conducted "under conditions amounting virtually to martial law"; they dismissed their counsel and conducted their own defence.

Molvi Cachalia, who was then in detention, was called as a defence witness by

¹ Mr. Cachalia was denied his request for an interpreter from Urdu, his first language, and was obliged to give evidence in English.

A.M. ("Kathy") Kathrada, accused No. 2, who had been active in the liberation struggle since his childhood and had served several terms of imprisonment. He was examined by Mr. Kathrada from 21 to 23 June, cross-examined by the prosecutor, Mr. Trengove, from 23 to 28 June, and briefly re-examined by Mr. Kathrada on 28 June.

Molvi Cachalia comes from a family which has made a great contribution to the struggle for freedom from the early years of this century. His father, A.M. Cachalia, was one of the closest colleagues of Mahatma Gandhi in South Africa. He went to prison several times in the *satyagraha* of 1907-1914, risking his property rather than succumb to pressure by white creditors. Many of his descendants have played key roles in the Indian resistance and the national liberation movement.

Molvi Cachalia himself made an impressive contribution to the struggle, and that is reflected in his evidence.

Born on December 5, 1908, while his father was in prison, he completed his early education in Johannesburg and then studied at Deoband University in India from 1924 to 1930. In the late 1930s, as the Government proceeded to enact further obnoxious racist measures, he joined with Dr. Yusuf Dadoo and others in organising militant resistance. In 1938 he helped establish the Nationalist Bloc against the compromising leadership of the Transvaal Indian Congress, and the Non-European United Front which sought to build unity of all the oppressed people in the struggle for freedom.

He was one of the leaders of the Indian passive resistance movement of 1946-48. During the great Defiance Campaign of 1952, he was Deputy Volunteer-in-Chief, working closely with Nelson Mandela, the Volunteer-in-Chief. He was repeatedly imprisoned and restricted for his activities.

He held leading positions in the Transvaal Indian Congress and the South African Indian Congress from 1946 to 1954 when he was forced by arbitrary banning orders to resign.

In 1955, along with Mr. Moses Kotane, he managed to leave the country and represent the South African people at the Asian-African Conference in Bandung.

He was detained for three months during the State of Emergency in 1960 and served with severe banning orders in 1963. He escaped from South Africa in 1964 to assist in the external work of the liberation movement. He worked in the Asian Mission of the African National Congress, established in New Delhi in 1967, until he was forced to retire because of ill-health. He returned to South Africa in 1991 when the Congresses were unbanned.

His wife, Miriam, was also active in the movement, serving two terms of

imprisonment during the Indian passive resistance and another term in the Defiance Campaign. She passed away in 1973.

I have edited this testimony as my personal tribute to Molvi Cachalia and Ahmad Kathrada, and to the contribution of Indian South Africans to the great liberation struggle. I would consider myself well rewarded if this can be of use to scholars in South Africa as they study their history.

New York
May 1992

E. S. Reddy

EXAMINATION BY MR. KATHRADA

JUNE 21, 1960

You are a detainee in terms of the Emergency Regulations promulgated under the Public Safety Act? - That is so, my Lord, I was arrested on the 30th March of this year...

Are you physically fit to give evidence in this case? - My Lord, as we are kept, we are rather in difficulty for the simple reason that I am suffering from cold, that is a common disease which affects me, and more particularly now that we are confined to the cell. It is very cold, we have to sleep on a cement floor, and my body is definitely aching. I am over fifty. The lighting conditions too in the cell are not bright, very dull, one cannot read much, and apart from that there is some provision made for the accused, where they call it a library where we could read and so on, but that cell is even colder, so I could not stay there for more than an hour, and that is one of my difficulties. So under those circumstances, if I give evidence only in the mornings, I think that would give me some relief.

MR. JUSTICE RUMPF:

Are you seated at the moment? You may be seated.

MR. KATHRADA:

You were born in Johannesburg on the 5th of December 1908? - Yes, My Lord.

You attended the Government Indian School in Johannesburg? - Yes, My Lord, I attended the Government Indian School where I studied up to Standard Four.

Did you attend any other school in the afternoon? - Yes, in the afternoon I attended the Urdu School, and in the evenings the Gujarati school.

When did you go to India? - In the year 1924 I left for India.

What did you go to India for? - I went there to study and I went to a place called Deoband where the Muslim University is situated, and I attended that University as a student.

In what language did you study at the Deoband University? - I studied in Persian and Arabic, and it was through the medium of Urdu, our main language.

Did you study the Koran and the *Hadis* then? - Yes, I studied the Koran and the *Hadis* then, that is, the study of Prophet Mohammed and some Islamic laws.

Did you then qualify as a theologian and a teacher according to the tenets of Islam? - That is correct.

Did you also study Muslim law? - Yes.

When did you qualify? - In 1930.

When did you return to South Africa? - In 1931.

I understand that during your youth and student days certain factors had a profound influence on your political viewpoint? - That is so.

Would you say that these factors determined your approach and outlook when you became politically active in later years? - That is correct.

Would I be correct in saying that you have accepted the method of passive resistance as a method of political struggle? - Yes, that is so.

I want you to describe the factors which influenced you during your youth and student days which led you to accept the concept of passive resistance as a form of political struggle. I understand that the earliest political influence on you came from your father in the period before you left for India in 1924. Is that correct? - Yes, that is correct. In 1924 the Government introduced a bill called the Class Areas Bill, which was designed to segregate all the Indians. The Indian community at that time was very, very agitated, and as a result of that, meetings used to be held - a lot of meetings were held throughout the country, also demonstrations took place in most of the centres...

I will come to that later, will you just for the moment answer the questions that I put to you. Was your father politically active at the time? - Yes.

What was the nature of his political activity? - He was the President of the Transvaal British Indian Association. That was the political organisation of the Indian community in the Transvaal, and he was actively participating in all the struggles that Mahatma Gandhi who was here at the time...

He was closely associated with the late Mahatma Gandhi? - Quite.

Did Mahatma Gandhi hold any position in this Association? - Yes, he was the Secretary of the Transvaal British Indian Association. My father was the President

of the Association.

What was his outlook on the question of passive resistance as a method of struggle? - My father accepted the method of passive resistance as the principal method for the redress of the grievances as far as the Indian question was concerned.

Now at Deoband University, apart from your religious teaching, did you also come under the political influence of your teachers? - Yes. The majority of the professors who were connected with this university were either members of the Indian National Congress or they belonged to an organisation called the *Jamiat-ul-Ulema-i-Hind*. This was an organisation of all the Muslim learned people in India which worked for the liberation of India, and fought side by side and in alliance with the Congress till the Indian people achieved independence.

Was your political outlook in any way influenced by the teachings of the Islamic religion? - Yes, certainly.

Does the Islamic religion have an attitude on matters relevant to the inter-relations of people? - Yes. We believe in the equality of man. All men are equal.

Does the Islamic religion impose upon you as a teacher and a theologian any duties in regard to the carrying out of the fundamental tenets of Islam, equality being one as you have just mentioned? - Yes, tolerance, justice and so on.

I don't know if you understood my question. Does the Islamic religion impose upon you a duty? - Yes, it does, to carry out the teachings of Islam in which we believe - that tolerance and justice and so on should be meted out to all.

During your stay at Deoband University and thereafter you were of course aware of the political activities and teachings of Mahatma Gandhi? - Quite so.

Were you in any way influenced by Gandhi's teachings? - Yes, I accepted *satyagraha* as the principle for attaining any of our objects.

Now on your return to South Africa in 1931, did you concern yourself with the welfare of the Indian community? - Yes, but I did not take any politically active part at the moment.

Were you a member of the Transvaal Indian Congress? - Yes, by virtue of its constitution which lays down that every member of the Indian community who is above the age of eighteen automatically becomes a member of the organisation.

When did you first begin to take an active part in the political activities of the community? - In 1938.

Was there any particular reason why you became active in 1938? - Yes, in that year the Minister of the Interior, Mr. Stuttaford, announced a scheme which was known as Servitude Scheme, which meant that if in any given area, 75 percent of the population residing there decide that the area should become an area for the white population only, then all the other members of the non-European groups should leave that area for European occupation only. As a result of that we thought and we believed that a great injustice would be meted out to the non-Europeans as a whole, and at that stage I thought I should participate in the active politics of the country.

So I would be correct in saying that you first began to take an active part in the political activities in a movement in opposition to the Servitude Scheme? - That is correct.

Did this opposition to the Servitude Scheme give birth to any non-European political organisation? - Yes, because this scheme was actually directed against the non-European people as a whole, the Non-European people - that means the Coloureds, the Indians and the Africans - throughout the country protested against this scheme, and as a result of that an organisation called Non-European United Front was established under the leadership of Mrs. Z. Gool in Cape Town and thereafter independently a similar committee was formed in Johannesburg. This was called the Non-European United Front of Transvaal.

And were you a member of the Non-European United Front? - Yes, I was one of the Council members of that organisation.

Was that the Committee? - Yes.

And what was the purpose of the Non-European United Front? - To bring about unification and cooperation amongst all sections of the people, and to oppose the Servitude Scheme which was announced by the Minister of the Interior.

Can you give the Court a brief description of the type of activities conducted by this organisation? - This organisation staged demonstrations, and one of the biggest demonstrations was staged in Cape Town, where thousands of people marched towards the House of Parliament in that year.

In 1939 as a result of legislation against the Indian community, was a Passive Resistance Council formed? - Yes, my Lords, as a result of opposition by all sections of the non-white population, this scheme was dropped and an Act...

We will come to that later. Were you a member of the Passive Resistance Council? - Yes.

Now I would like you to describe briefly the position that you held in the Transvaal Indian Congress. When did you first become a member of the Working

Committee? - In 1945.

Did you also become a member of the Executive Committee? - Yes, the following year.

Until what year did you retain your position as an Executive Member of the Transvaal Indian Congress? - Up to 1954, when I was banned under Ministerial order.

Did you also hold a position as Vice-President of the Transvaal Indian Congress? - I think it must be 1946 or 1947.

Were you also a secretary of the Transvaal Indian Congress? - Yes.

Do you remember when? - From 1951 to 1954.

Were you also a member of the Executive Committee of the South African Indian Congress (SAIC)? - Yes.

What year? - I think from 1947 or 1948, up to 1954.

Now I understand that during the years 1946 to 1954 you were in addition connected with various other organisations and committees. Were you a member of the Joint Passive Resistance Council of the Natal and Transvaal Indian Congresses established in 1946? - Yes.

What was the purpose of this Council? - To conduct passive resistance as a protest against the Asiatic Land Tenure and Indian Representation Act of 1946.

Was that why it was called the Passive Resistance Council? - That is right.

Is it correct that in 1952 the African National Congress and the South African Indian Congress set up a National Action Committee? - Yes.

Were you a member of this Committee? - I was.

Do you know how many members were on this committee? - There were seven members.

Do you regard yourself as a Communist? - No.

Have you ever been a Communist? - No, never...

I want to refer you to A.M.K. 44², which is the Agenda Book of the South African Indian Congress Conference held at the Gandhi Hall, Johannesburg, on

² Exhibit number

the 19th, 20th and 21st October, 1956. Now in the section dealing with the Constitution I want to read out the objects of the South African Indian Congress, and I want you to tell me later whether those were the objects of the SAIC as you know them.

"The objects of the South African Indian Congress shall be:

- (a) To unite and assist the constituent organisations in carrying out the objects set in their respective constitutions in so far as they are not inconsistent with the aforesaid policy;
- (b) To provide for the policy of reciprocity as between the constituent organisations;
- (c) To hold Conferences on matters of concern and interest to the Indian community as Indians and as South Africans;
- (d) To improve the relations between Indians and Europeans and other communities and to promote friendliness between those resident in the Union;
- (e) To cooperate as far as possible with other communities and organisations in matters affecting the interests of the people resident in the Union and elsewhere;
- (f) To do all such other things as may be considered conducive to attaining the above objects and to promote generally by all legitimate means the interests of Indians as South Africans and to be helpful to other peoples in the Union."

Were those the objects of the South African Indian Congress? - Yes.

Was a more detailed policy adopted by the Natal Indian Congress in 1945? - Yes.

What was this policy known as? - It was known as the Ten Point Programme.

I want to refer to the Agenda Book of the Natal Indian Congress Conference held in Durban on the 31st of May to the 1st of June, 1947. On page 2 of the section dealing with the Secretarial Report, in paragraph 6, the ten points are mentioned.

"1. Adult franchise on the common roll.

2. Unconditional repeal of the Pegging Act.

3. Abrogation of the housing and expropriation ordinances.
4. Removal of provincial barriers.
5. Free and compulsory education up to Standard Eight.
6. Trading rights without discrimination.
7. Removal of the industrial colour bar.
8. State subsidies to market gardeners and farmers.
9. Provision of adequate civic amenities.
10. Cooperation with other non-European national organisations."

Now since 1947 have these ten points been substantially the policy of the South African Indian Congress as well? - Yes, that is so.

What has been the policy of the SAIC on the question of discriminatory laws against Indians? - The policy is one of abolishing these discriminatory laws.

I shall at a later stage return to the attitude of the SAIC to the other non-European groups. At the moment I want to restrict myself to the Indian community. You have already told the Court that the policy of the South African Indian Congress was *inter alia* the removal of the discriminatory laws. I want to now deal with some of the laws which played a prominent part in the campaigns of Indian political organisations and which formed a background against which the policy of the South African Indian Congress grew. Firstly, I want to deal with Law 3 of 1885. What was its broad effect in regard to freehold property? - This was the first law enacted by the Transvaal Government in 1885, whereby Indians were first deprived of owning any fixed property.

And about citizenship rights? - They were also deprived of citizenship rights, but they were allowed to trade, provided they obtained a licence for £25 which was subsequently reduced to £3.

Did the Indian community campaign against this law? - Yes, the Indian community made representations to the government, it submitted petitions and they interviewed the British Agent who was stationed at Pretoria in those days, in view of the fact that under the London Convention of 1884 Indians were regarded as British subjects and were entitled to enter into any trade whatsoever, any trade and manufacturing, and they were also entitled to buy land for their property. And therefore they approached the British Agent, who also very strongly took up the matter.

The next law that I want to deal with briefly is Law No. 15 of 1898, which I believe was repealed and re-enacted in 1908? - That is so. It is commonly known as the Gold Law.

Briefly describe how this law affected Indians in regard to ownership of land in proclaimed areas and occupation of land in proclaimed areas? - Insofar as ownership of land is concerned, they were debarred from occupying in the proclaimed areas for the purposes of residence, but they were allowed to trade in proclaimed areas.

In regard to immigration, I want to refer you to the 1902 Transvaal Ordinance. What was the effect on Indian immigration into the Transvaal? - Immediately after the cessation of war,³ an Ordinance was passed which was generally known as Peace Preservation Ordinance, which checked on the people who came to the Colony. Before the war Indians were quite entitled to enter into the Colony, but since this Ordinance of 1902, they would only be allowed provided they would prove that they had been in the Transvaal before, and therefore no new immigration was allowed - rather no newcomers were allowed to enter into the Transvaal.

Do I understand that prior to 1902 there were no such restrictions? - No.

Was there a further law dealing with immigration in 1913? - Yes, Immigration Regulation Act of 1913.

What was its effect? - According to that Act no new Indian immigrant could enter into the Union from that date...

Did this Act impose restrictions on the movement of Indians between the provinces? - That is correct, that was also one of the provisions, that the resident of one province cannot enter into the other province freely.

What formalities do you have to comply with in order to visit another province? By you I mean Indians? - They apply to the Immigration Office for a permit and if he gets a permit, he would be entitled to enter into another province. If an Indian has entered into another province on a permit he cannot reside there for more than three months a year...

What effect did the Township Act of 1908 have on the Indians' right to trade? - The Township Act... meant that any township which would carry a clause debarring the Non-Europeans to occupy lands or premises... the non-European people, would not be able to occupy land or premises in these townships.

Prior to 1919 were there any restrictions in regard to the formation and operation of Indian companies? - No, there was no restriction in forming Indian

³ The South African War of 1899-1902

companies before 1919, and there is no restriction now to form an Indian company.

Were there restrictions promulgated in 1919 to prevent Indian companies from operating in certain fields? - The Asiatic private companies were not entitled to hold fixed properties since 1919.

Under the Mines and Works Act, is the position of Indians in skilled trades affected in any way? - Yes, they were debarred from becoming skilled workers.

Was the position of Indian ownership of shares in private companies dealt with by the legislature in 1932? - Yes, the Asiatic Land Tenure Act of 1932. Under this Act any Asiatic private company was not entitled to hold any fixed property at all, whereas in 1919 any company, even a private company holding fixed property, if the Asiatics had a few shares in that or the minority shareholding, that was permissible, but from 1932 no private company was entitled to own fixed property.

Coming to nominees, was the position of nominees also dealt with by the legislature in 1932? - Yes. The position of nominee holding was such that in the year 1888 an Indian firm in Klerksdorp purchased a property from public auction, and when the papers were sent to Pretoria to register a transfer, it was then informed by the registrar that Indians cannot be registered holder of such property... since then the practice of holding properties by Europeans on behalf of Indians started, and that practice grew and remained as such until 1932. Although there was a lot of risk attached to that, the Indian people preferred that way, because there was consent of the government to holding properties in that manner. In 1932 nominee holdings were totally stopped.

Now coming to 1939, what steps were taken by the legislature in regard to the occupation of land by Indians? - In 1939 an Act called Asiatic Land and Trading Act was introduced... By virtue of that Act the position of the Indians in the Transvaal in relation to business, trading and residence, was pegged; that means they were only able to occupy those premises which were already in occupation by members of the Indian community on that date. This Act was an interim measure for two years.

Prior to 1939 were there any such restrictions outside the townships and the gold proclaimed areas? - No, Indians could take up legally any occupation on any land or premises anywhere in the Transvaal, with of course those two exceptions.

Was this Asiatic Land Act followed by the Pegging Act of 1943? - Yes, that is correct.

Did the Pegging Act apply only to the Transvaal? - No, it applied to Natal as

well.

Were there any restrictions in Natal prior to that date? - Not of occupation only, but in regard to the ownership of properties too, there were no restrictions whatsoever.

Were these two measures then consolidated in an Act of Parliament in 1946? - Yes, the Asiatic Land Tenure and Indian Representation Act was passed in 1946, whereby no further occupation and ownership of the Indians were allowed, that they did not occupy on that date. But this Act recognised one principle, and that was of the trade, that there was no restriction on the trading, for the purpose of trading, as it was ever since 1885, as far as the Transvaal is concerned, since the Indians came into the Transvaal.

Now referring to Natal, is it correct to say that the history of the struggle of the Indian political organisations is closely linked with what happened to the people in Natal? - That is correct.

When did the Indians first arrive in Natal? - Indians first came to Natal in 1860. The first batch came in 1860 as a result of very lengthy negotiations which went on between the Natal Government and the British Government on the one hand and the Indian government on the other hand, and after some years of negotiations eventually an agreement was reached whereby the Indians were brought - rather the indentured labourers were brought to Natal.

This followed the abolition of slavery? - Yes.

Did these indentured labourers come on any fixed contract? - Yes. They came on a fixed contract to work at a certain wage, I think about ten shillings a month, for a period of three years, which was afterwards increased to five years.

Were there any conditions attached to the agreement as to what would happen to the labourers after their term of indenture expired? - Yes, on expiration of their contract, if they wished to go to India, they would be given a free passage back, and in case they stay in this country, they would stay as free citizens under the common law of the government at the time.

I believe that at about this time also another type of Indian came into Natal, known as free immigrants? - Yes, there was no legal restriction attached to any Indians coming into Natal, and therefore quite a number of people who were domiciled in Mauritius or carrying on trade there, they came here. And quite a number of Indian traders followed from India, from various provinces, particularly from the Western part of India.

What was the predominant form of Indian immigration at this time? - Indentured.

Were the indentured Indians allowed to farm after their period of indenture had expired? - After a while, after a few years this flow of indentured labourers slackened, and as a result of that the Natal Government again made representation to India, and in 1874 a Bill was passed by the Natal Government giving more facilities to these indentured labourers if they did not wish to return to India. If they wished to stay in this country, they would be given a plot of land to farm on, given for free.

How long did this position continue? - It remained so till 1891.

What happened then? - In 1891 the facilities were taken away, and instead if the indentured labourer wished to remain in this country, he was subjected to a poll tax of £3 to be paid annually by him.⁴

Was the immigration of Indians into Natal ever restricted? - Yes, in 1897, some restrictions came into operation.⁵

What was the position with regard to the Parliamentary franchise in Natal prior to 1896? - Indians were entitled to a franchise right in Natal up to 1894. In that year the franchise was taken away by an Act of Parliament.⁶

MR. JUSTICE BEKKER

Were all Indians entitled? - Yes.

Indentured labourers? - Those would become free, immediately their contract is over, my Lord, and entitled to franchise rights.

Free immigrants? - Free immigrants were entitled to franchise rights.

As a matter of interest, how big were these plots of land which were given to them? - A few acres of land, which would be sufficient for the upkeep of that family.

Mr. KATHRADA

Could you tell us what the provisions were with regard to the Municipal franchise before and after 1924? - The Indians were entitled to Municipal

⁴ The £3 tax was introduced by the Indian Immigration Amendment Act of Natal in 1895.

⁵ Under the Immigration Restriction Act of 1897.

⁶ Natal enacted a law in 1894 to deprive Asiatics of Parliamentary franchise, but Royal assent for the law was denied after protests by the Indian community. In 1896, Natal enacted another law with the same effect, but without specific mention of "Asiatics", and it received assent.

franchise up to 1924, and in that year they were deprived of that franchise as well.

What effect did the 1946 Asiatic Land Tenure Act have on Indian ownership and occupation of land in Natal? - This was the first time in history that Indians were debarred from occupation and ownership of land in Natal.

Is it correct to say that from 1946 onwards the position of Indians has, briefly speaking, been the same throughout the Union in regard to the occupation and ownership of land, with the exception of the Cape, I should say? - That is correct.

And with the exception of the Cape where the Indians enjoyed a limited form of franchise, is it correct that the same can be said of the franchise? - Yes, that is correct.

Coming to 1950, is it correct that the Group Areas Act perpetuated the prohibitions against Indians acquiring land owned by other groups? - That is so.

Is it correct that the Group Areas Act for the first time exposed the Indian community to the dangers of having their land confiscated? - Yes, that is so. Powers were given under the Act that if any land is held illegally perhaps or it becomes illegal at any time... then the land may be confiscated. This is the first time confiscation of the properties really began.

How has the South African Indian Congress regarded the wide powers which the Minister of the Interior has under the Group Areas Act? - The Indians believed that these wide powers in the hands of the Minister was something like dictatorial powers, which affect the Indian community in practically every aspect of their lives, and this is the first time in the history of South Africa that Indians were subjected to be ruled by proclamation.

What in the opinion of the South African Indian Congress was the real intention and policy of this Act? - This Act, the Indian people mean, was to exterminate the Indian community and to repatriate them if possible from this country.

Was this view of the SAIC strengthened by the reports of any government committee? - Yes. The Joint Committee on the Land Tenure was established by the Minister of the Interior, and the findings were published just before this Act was enacted in Parliament, and there was the sort of reason given in the report.

To your knowledge was a part of this Committee's report contained in any of the publications of the South African Indian Congress? - Yes, I think there is in one of the Agenda Books, in a secretarial report I think it was mentioned.

I want to refer to a paragraph in the Agenda Book of the South African Indian Congress Conference held in Johannesburg in 1956, A.M.K. 44, and I want you to tell me whether this is what you are referring to. Under Annexure A2, pages 2 and 3 of A.M.K. 44, my Lords, I am reading on page 2, it is a quotation from the report of the Inter-Departmental Subcommittee appointed in 1948:

"Before stating our recommendations we feel that reference should be made to the one matter which, strictly speaking, falls outside our terms of reference but which is so closely associated in the public mind with the Asiatic question that it has a determining influence on the evidence tendered to us and accordingly also on recommendations based on such evidence, and that is the possibility of repatriating the Asiatics from South Africa.

"There appears to be an ever-growing belief in the public mind that the only satisfactory solution of the Asiatic question is repatriation, and that whatever is done by way of legislation, should be such as not to endanger the possibility of repatriation and deprive the public of one of its most deeply cherished hopes.

"The fundamental theme of the evidence throughout the years has been and still is: repatriation or, failing which, compulsory segregation. In the most recent evidence there is noticeable a distinct tendency for this scheme to assume the form of repatriation, and, pending which, compulsory segregation. In its most advanced form this then reads: repatriation and, failing which, compulsory segregation, *with boycott to induce repatriation.*"

Was that the report you were referring to? - Yes...

Has this attitude, this sort of attitude to the knowledge of the South African Indian Congress been altered in any way? - No.

Also in this connection I want to refer you to statements purported to have been made by Ministers and others in responsible positions in connection with this question. Firstly, I want to refer to a statement alleged to have been made by Mr. W. A. Maree, Member of Parliament for Newcastle, and at present Minister of Bantu Education, as reported in the *Natal Witness* of the 23rd of June 1956.

"After the effect of the Group Areas Act had been felt, Indians will only be too pleased to get out of South Africa", said Mr. W. A. Maree at a report back meeting held in the Town Hall."

Next I want to quote from the Manifesto of the Nationalist Party in 1948.

"The Party holds the view that Indians are a foreign and outlandish

element which is unassimilable. They can never become part of the country and they must therefore be treated as an immigrant community."
(From the *Programme and Principles of the Nationalist Party*)

Does the South African Indian Congress accept these statements as having been made by the Minister concerned and by the Nationalist Party? - Yes...

Are you aware of a statement made by the former Chairman of the Group Areas Board, Mr. de Vos Hugel, who is at present a Judge in the Supreme Court, about the Indians and the Group Areas Act? - Yes, where he refers to the fact that the Indians - something to the effect that they are undesirable and they are robbers.

If I put this sentence to you, would you be able to recognise it? "Indians were a band of robbers who won't part with their ill-gotten gains, unless forced to do so". Is that what you are referring to? - Yes.

MR. JUSTICE RUMPF

When was this said? - A couple of years ago.

Where? - I think it was in Pretoria.

Was it on any particular occasion? - I don't know whether there was a press statement or something to that effect.

Did it appear in the press? - Yes.

MR. KATHRADA

I want now to refer you to a resolution passed at a Conference of the South African Indian Congress in 1950 on the Group Areas Act. It is contained in Exhibit G.5. Were you present at that conference? - Yes.

JUNE 22, 1960

...I was about to read from Exhibit G.5A on page 10 of which is a resolution passed at a conference of the South African Indian Congress in 1950. It is a resolution on the Group Areas Act.

"This Conference of the South African Indian Congress held in Johannesburg, having carefully considered the implications of the Group Areas Act, is of the positive opinion that its enforcement will: (a) entail

compulsory creation of numerous ghettos for the different sections of the Coloured and African groups, with concomitant conditions of slums, lack of hygiene and civic amenities as now prevailing in Asiatic bazaars and locations; (b) wipe out the widely spread existing business concerns of the Indian community; (c) create a caste system in South Africa with a dominant white caste for the perpetuation of the servility of all the non-European peoples of South Africa; (d) foster racial exclusiveness and thereby retard the growth of harmony and concord between the different sections of the entire South African nation; (e) bring about a despotic system of government under which the non-European people will be ruled by regulation calculated to crush out all liberties; (f) bring about conditions which would compel the Indian community either to expatriate itself or to exist in abject poverty and degradation.

2. The Conference wholeheartedly supports the decision of the Government of India not to participate in the Round Table Conference with the Union Government, as such a conference would have been one-sided with the object of expatriating the whole Indian community of South Africa, and taking the question of the treatment of Indians in South Africa to the United Nations Assembly.

3. The Conference therefore calls upon: (i) all freedom-loving people of South Africa to oppose this pernicious measure by all legitimate ways and means at their disposal; (ii) the Indian community to consolidate and unify its forces to offer concerted resistance and to this end instructs the incoming Executive of the South African Indian Congress to devise ways and means whereby to defeat the purposes of the Act."

Was that the resolution passed at that Conference? - Yes.

Why does the South African Indian Congress claim the abolition of all discriminatory laws against Indians? - My Lords, the reason in asking to abolish all the discriminatory laws is because the Indian community feels that the Government should honour the promises they have made from time to time and the undertaking which was made by the Government from the very inception when the Indian people were brought to this country.

Would you agree that the long history of legislative attacks on the rights of the Indian people to own and occupy land is designed primarily to completely ruin the community? - Yes, that is how we see it.

Is it the view of the South African Indian Congress that if the Indian people in the Transvaal in particular are prevented from carrying on normal trade, it would result in its complete ruination? - Yes, that is so.

As a result of almost eighty years of trading, is it correct to say that the bulk of the Indians are not trained for any other occupation? - That is correct.

In the field of civil service, have Indians access as employees in Government Departments? - Not to my knowledge, except in schools.

Have there been any avenues open to them in the police force for instance? - May be, but very few, I don't know, but I don't think so.

Have any avenues of employment been open to them in the army? - No.

In the field of labour other than commerce, are there any avenues of employment open? - No, if there are, there are very few, for instance working in the shops, but then that too may be affected by the Group Areas Act, I suppose.

To your knowledge, is there one skilled boilermaker, fitter and turner, miner, woodworker in the Indian community in the Transvaal? - No, none.

Is this lack of skilled labour among the Indians due to choice or due to lack of facilities? - Lack of facilities.

In the professions, apart from medicine, law and teaching, is there access to Indians? - No.

Do you know of one Indian dentist or engineer who has qualified in South Africa? - No, none.

How do you explain the absence of Indians in the other professions? - Because they have no facilities at all.

Can Indians become chartered accountants or pharmacists? - It would be very difficult indeed for them to get their apprenticeship even if they qualify at the University, but there is no course open for them, I understand, as far as pharmacy is concerned...

Do you regard the struggle of the South African Indian Congress as a struggle for the very survival of the Indians in this country? - Certainly.

We have so far dealt with the Indian community only. It is common cause that the South African Indian Congress did not concern itself with the position of the Indian community only. In this connection I want to refer to the Agenda Book of the South African Indian Congress of 1952, on page 2 of the Secretarial Report. I would like to read a resolution and ask you whether that is the policy of the South African Indian Congress. This was a Conference of the South African Indian Congress, held at the Duncan Hall, Johannesburg, on January 25-27, 1952. Do you remember this Conference? - Yes.

I read from paragraph 5 on page 2 of the Secretarial Report:

"After giving serious consideration to the dangerous situation facing the people of South Africa, the last Conference unanimously passed the following resolution: `Conference acclaims the growing unity of the oppressed non-white people of the Union of South Africa as reflected in the mighty united action of June 26, 1950, the national day of protest and mourning. The South African Indian Congress, believing in the establishment of a true democracy embracing all South Africans, white and non-white, pledges to continue in its sustained endeavours to that end. In particular the Conference is of the considered opinion that in order to meet the challenge of the Nationalist Government and attacks on the liberty of the people of South Africa, the South African Indian people must: (a) consolidate the Indo-African cooperation that has already been forged in the struggle for freedom and emancipation; (b) endeavour to strengthen further cooperation between the Indian people, the Coloured people and European democrats."

The report then goes on to say:

"Your Congress devoted its time and energy in implementing the above resolution. This task was made easier because of the successful action of the people, African, Coloured and Indian, on the 1st May and the 26th June, 1950. On these days the non-European people of South Africa displayed a keen sense of discipline and peaceful determination. Their fraternal solidarity and unity of purpose has already made a definite change and has ushered in a new era of struggle against oppression, exploitation and racial persecution."

You remember that report? - Yes.

Now would you agree that from this time onwards the cooperation which had already existed between the South African Indian Congress and the African National Congress was transformed into a more or less permanent alliance? - Yes, into an alliance.

What was the principal method used by the Indian Congress to pursue its aims? - The Indian Congress used the method of non-violence and *satyagraha* in order to pursue its aims.

Is this also known as passive resistance? - Yes.

Who was the originator of this method? - The originator of this method was Mahatma Gandhi.

Did Tolstoy have anything to do with the development of the idea of passive resistance? - Tolstoy was a great passive resister and a Christian and when Mahatma Gandhi conducted passive resistance struggle in the Transvaal, he approved of it.

Where was Gandhi when he originated the passive resistance as a method of struggle? - He was here in South Africa.

During what period was this? - The active form of passive resistance which was embarked upon was from 1906 to 1914...

The adoption of the method of passive resistance by the South African Indian Congress, would you say, is influenced in any way by the passive resistance movement of Mahatma Gandhi? - Yes, not only that, but it is a continuation of that struggle.

I understand that it is a historical fact that Mahatma Gandhi came to South Africa in 1893? - That is so.

Did he have anything to do with the founding of the Natal Indian Congress? - Yes. Originally he came to South Africa for one year to advise some of his clients on a law suit, and after the year expired, when he saw things here, the Indian community asked him to stay for the difficulties they were facing at the time. He decided that they must form an organisation, and through the medium of that organisation the Indian community should work. He is the founder of the Natal Indian Congress in 1894 and he formed this Congress really on the basis of the Indian National Congress which existed in India at the time...

As a result of the numerous discriminatory laws which you spoke about, did Gandhi develop this new form of struggle at about the beginning of the century? - Yes, that is so.

Did Gandhi form a political organisation in the Transvaal? - Yes, in 1902 or 1903 he formed the Transvaal British Indian Association.

I understand that in 1906 the Transvaal Government passed an ordinance providing for the compulsory registration of Asiatics and their identification by means of fingerprints? - Yes, that is so.

What did the Transvaal British Indian Association do about it? - At the time the Transvaal was a Crown Colony, and they made a protest and eventually a deputation consisting of Gandhi and other members of the Indian community went over to England to interview the British Government there, as well as to educate the British public opinion to see that this measure is not passed.⁷ He

⁷ Mr. Gandhi and Mr. H. O. Ally visited England as representatives of the Transvaal Indians from October 20 to December 1, 1906.

also informed the Colonial Secretary at that time that if this measure will be passed, then we will rather disobey the law and go to prison. As a result of this representation, the (ordinance) was disallowed by the British Government.

Was the same measure re-enacted at a later stage? - Yes, in 1907 when the Transvaal got responsible government, the same measure was re-enacted as Act 2 of 1907.

Now you have already told the Court that in the year 1907 an Act restricting Indian immigration was passed? - Yes, that is so.

As a result of this measure, what steps did the Indian community take? - When this Act was passed the Transvaal British Indian Association held a public meeting in which they decided not to obey the provisions of the Act and instead rather go to gaol, and defy the law. In that meeting, pledges were also taken from the people and to that effect a resolution was passed. Later on, those who were prepared to defy made the same pledge in writing, which was taken and signed by the people who were like volunteers, and they did defy the law thereafter. The way of defiance at the time against this law was that they would not, as the law required them, go and register at a certain date...

This was the first passive resistance? - This was the first resistance ever started.

Was it also directed against the requirement that fingerprints should be given as a means of identification? - Yes.

Was the Transvaal British Indian Association alone in this particular campaign, or did it work with other groups? - This law applied to the Chinese community as well. Therefore the Indian Association formed an alliance with the Chinese association at the time and both communities took the action jointly...

Now, apart from actually defying this law, did the campaign take any other form? - Yes, the volunteer corps was established and one of their duties was to work as pickets, at the immigration and other registration offices where they were established. Also people trading without licences, so that they could be arrested. Also, people crossed the borders from Natal to the Transvaal in defiance of the Act.

Was it only Indians who went to gaol in this campaign? - Apart from the Indians and the Chinese some Europeans also went to gaol, like Mr. Kallenbach⁸ and so on.

⁸ Mr. Hermann Kallenbach, a European architect in Johannesburg, became a devoted friend and co-worker of Mahatma Gandhi. He served a term of imprisonment during the *satyagraha* in 1913.

Do you know if the Europeans set themselves up into any organisation to help the passive resistance movement? - Yes, there was a European Committee who sympathised with the movement, under the leadership of the late Mr. William Hosken.⁹

As a result of this campaign, did the authorities take any steps to negotiate with Gandhi? - Yes, when Mahatma Gandhi was arrested and was confined in gaol in Johannesburg, General Smuts sent an emissary, I think it was Mr. Albert Cartwright...¹⁰

Was any agreement arrived at, as a result of these negotiations? - Yes, General Smuts put forward some suggestions that if the Indian community immediately register themselves according to the Act, then at a later stage General Smuts would alter the various provisions which were objected to by the Indian community.

Did the Indian community carry out its part of the bargain? - Yes. Gandhi informed the Indian community of this negotiation.

Did the authorities carry out their part of the bargain? - No.

And what did the Indian people then do? - As a result of that another meeting was called where all these registration certificates were collected in advance - about 2,000 were collected in advance - and others were brought to the meeting, and they were all burnt.

Did this phase of the campaign take any other form besides the burning of the certificates? - Yes, as I mentioned...

I think you have answered this question, the crossing of borders and so on. Were large numbers of people again arrested? - Yes.

And was another settlement arrived at? - That is right. Eventually this matter was settled and the Act of 1907 was repealed.¹¹

Was the passive resistance movement then called off? - Yes, it was suspended.

⁹ Mr. Hosken, a leader of the Progressive Party in the Transvaal and former President of the Association of Chambers of Commerce of South Africa, became chairman of the Johannesburg Committee of Sympathisers with the cause of the Indians.

¹⁰ Mr. Cartwright, editor of the *Transvaal Leader* and member of the Progressive Party, helped arrange the provisional settlement of January 30, 1908.

¹¹ Under a provisional settlement in May 1911, General Smuts agreed to repeal the Transvaal Asiatics Registration Act of 1907.

Did the Government make any other promises at the time about the rights of the Indian community? - Yes, they would also administer the laws affecting the Indians in a just manner and sympathetically.

How did Mahatma Gandhi and his followers regard the passing of the Immigration Act of 1913? - They thought at the time that this was not in conformity with the promise made.

I want to refer you to a telegram sent on behalf of the British Indian Association which is contained in the Report of the Indian Enquiry Commission of 1914. The telegram was sent by your father:¹²

"VIEW PASSAGE IMMIGRATION BILL PARLIAMENT, MY ASSOCIATION WOULD RESPECTFULLY DRAW YOUR EXCELLENCY'S ATTENTION TO FOLLOWING OBJECTION BILL FROM STANDPOINT INDIAN COMMUNITY. BILL FAILS TO CARRY OUT THE PROVISIONAL SETTLEMENT IN THAT CONTRARY TO THAT SETTLEMENT IT TAKES AWAY EXISTING RIGHTS. IT RESTRICTS RIGHT APPEAL SUPREME COURT PRESENTLY EXISTING. IT DEPRIVES INDIANS RESIDENT NATAL OF FACILITY PRESENTLY ENJOYED, REENTER THAT PROVINCE AFTER ABSENCE ON STRENGTH OF THREE YEARS' PREVIOUS RESIDENCE, WHILE INDENTURED INDIANS WHO HAVE PAID £3 TAX MAY NOT UNDER BILL BE ALLOWED CLAIM RIGHT RESIDENCE THAT PROVINCE. IT TAKES AWAY RIGHT SOUTH AFRICA-BORN INDIANS ENTER CAPE UNDER ITS EXISTING STATUTE. FREE STATE DIFFICULTY REMAINS AS BEFORE IN THAT DECLARATION REQUIRED FROM EDUCATED INDIAN IMMIGRANT WHICH WOULD NOT BE REQUIRED FROM ANY OTHER IMMIGRANT AS IMMIGRANT."

As a result of what the Indian community regarded as a breach of faith, was another passive resistance movement started? - Yes.

When? - When this Act was introduced, objections were taken against the Bill and protests were made and also informed the Government at the time that if this Bill becomes an Act as it is, then they will renew the passive resistance movement.

What were the main issues in the campaign? - The main issues related to the abolition of the £ 3 tax, and...

¹² The telegram was sent by Mr. A. M. Cachalia, Chairman, British Indian Association, to Lord Gladstone, Governor-General of South Africa, on June 16, 1913. The full text is reproduced in *The Collected Works of Mahatma Gandhi*, Volume 12, page 112.

Did the Indian people refuse to pay the tax? - Yes.

Were there strikes amongst the indentured labourers as part of the campaign?
- Yes, there were strikes in the coal fields of Natal, also in the sugar plantations and other industries.

Was there any form of breach of the provincial barriers? - Yes, as part of the struggle Mahatma Gandhi marched to the Transvaal with over two thousand people in breach of the Provincial Barriers Act, and entered into the Transvaal.

What happened to the marchers? - Mahatma Gandhi, with other leaders like Mr. Kallenbach and Mr. Polak, was arrested. The marchers continued their march up to Balfour. From there they were sent back, to Natal.

Did any violence occur? - Not with the marchers, but during the strikes, yes, some people were killed there, four or five people.

MR. JUSTICE RUMPF:

How did that happen? - Shooting by the police.

MR. KATHRADA:

Does the fact that violence occurred in this particular campaign make it fall outside Gandhi's principles? - No, not at all.

MR. JUSTICE RUMPF:

Why were these people shot by the police? - Because they went on strike, and there was compulsion in so many cases, there were demonstrations while the strike was on, and as a result the police fired shots.

Why did the police have to fire? - Because there were demonstrations by the strikers...

Why were they then shot by the police? - Because they did not disperse at the time.

Is that what you read up about it? - Yes.

Because they did not disperse? - Yes.

MR. KATHRADA:

Is it always possible in your view, as happened in this case, as a result of the action of the authorities, that a purely peaceful demonstration can turn into

violence? In your view, does the possibility always exist that as a result of the action of the police authorities, a peaceful demonstration can turn into violence or can turn into a bloodbath? - If the demonstrations are organised by the organisation which is leading the movement, their volunteers or their followers will not indulge in violence, but there is always a possibility that something might go wrong, police might shoot, or some other elements would come and do things. There is always a possibility of violence.

What would the duties of passive resisters be under these circumstances? - Even if they are attacked or even if violence occurred from any other side, their duty will be not to fight back, and not to take part in the violence.

What happened as a result of the 1913 passive resistance campaign? - As a result of these struggles here, the Government of India asked the Government of South Africa to appoint a commission of inquiry and to bring about some sort of settlement. As a result of that a Commission was appointed in 1914, and it made certain recommendations which became the basis of the settlement of the question at the time.

Do you know what sort of concessions were made? - The £3 tax was abolished, and an Act called the Indian Relief Act was passed, whereby the Indian marriages were regularised, and the domicile question of the Indian people in South Africa was settled.

Also as a result of this passive resistance, did there come into being an agreement between Gandhi and General Smuts? - Yes, this was the agreement. This agreement came about by negotiation between Mahatma Gandhi and General Smuts. It is generally known amongst our people as the Smuts-Gandhi agreement.

Does the South African Indian Congress regard this agreement as an important landmark in the history of the community? - Yes.

Is it correct that the Smuts-Gandhi agreement was actually contained in certain correspondence that passed between the two? - Yes, after consultation, discussion, and when the talks were final, it was reduced to writing by exchanging letters.

Will it be correct to say that the salient features of the agreement were: (a) the concessions that were made; (b) the Government promise to leave the rights of the Indians intact; and (c) the Indians called off the passive resistance campaign whilst reserving the right to continue to agitate for full civil rights for all? - That is so.

Is it true that during and after these struggles, Gandhi coined the term *Satyagraha* and began to expound the theory that lay behind it? - Yes, that is correct.

I would like to read an article by Mahatma Gandhi which is contained in the souvenir of the passive resistance movement in South Africa, 1906-1914...¹³

THE THEORY AND PRACTICE OF PASSIVE RESISTANCE

by

M. K. Gandhi

I shall be at least far away from Phoenix if not actually in the Motherland when this Commemoration Issue is published. Without Passive Resistance there would have been no richly illustrated and important special issue of *Indian Opinion*, which has, for the last eleven years, in an unpretentious and humble manner, endeavoured to serve my countrymen and South Africa, a period covering the most critical stage that they will, perhaps, ever have to pass through. It marks the rise and growth of Passive Resistance, which has attracted world-wide attention. The term does not fit the activity of the Indian community during the past eight years. Its equivalent in the vernacular, rendered into English, means Truth-Force. I think Tolstoy called it also Soul-Force, or Love-Force, and so it is. Carried out to its utmost limit, this force is independent of pecuniary or other material assistance; certainly, even in its elementary form, of physical force or violence. Indeed, violence is the negation of this great spiritual force, which can only be cultivated or wielded by those who will entirely eschew violence. It is a force that may be used by individuals as well as by communities. It may be used as well in political as in domestic affairs. Its universal applicability is a demonstration of its permanence and invincibility. It can be used alike by men, women, and children. It is totally untrue to say that it is a force to be used only by the weak so long as they are not capable of meeting violence by violence. This superstition arises from the incompleteness of the English expression. It is impossible for those who consider themselves to be weak to apply this force. Only those who realise that there is something in man which is superior to the brute nature in him, and that latter always yields to it, can effectively be Passive Resisters. This force is to violence and, therefore, to all tyranny, all injustice, what light is to darkness. In politics, its use is based upon the immutable maxim that government of the people is possible only so long as they consent either consciously or unconsciously to be governed. We did not want to be governed by the Asiatic Act of 1907 of the Transvaal, and it had to go before this mighty force. Two courses were open to us - to use violence when we were called upon to submit to the Act, or to suffer the penalties prescribed under the Act, and thus to draw out and exhibit the force of the soul within us for a period

¹³ The following is an article written by Mahatma Gandhi for the "Golden Number" of *Indian Opinion*, released on December 1, 1914.

long enough to appeal to the sympathetic chord in the governors or the law-makers. We have taken long to achieve what we set about striving for. That was because our Passive Resistance was not of the most complete type. All Passive Resisters do not understand the full value of the force, nor have we men who always from conviction refrain from violence. The use of this force requires the adoption of poverty, in the sense that we must be indifferent whether we have the wherewithal to feed or clothe ourselves. During the past struggle all Passive Resisters, if any at all, were not prepared to go that length. Some again were only Passive Resisters so-called. They came without any conviction, often with mixed motives, less often with impure motives. Some even, whilst engaged in the struggle would gladly have resorted to violence but for most vigilant supervision. Thus it was that the struggle became prolonged; for the exercise of the purest soul-force, in its perfect form, brings about instantaneous relief. For this exercise, prolonged training of the individual soul is an absolute necessity, so that a perfect Passive Resister has to be almost, if not entirely, a perfect man. We cannot all suddenly become such men, but, if my proposition is correct - as I know it to be correct - the greater the spirit of Passive Resistance in us, the better men we will become. Its use, therefore, is, I think, indisputable, and it is a force which, if it becomes universal, would revolutionise social ideals and do away with despotisms and the ever-growing militarism under which the nations of the West are groaning and are being almost crushed to death, and which fairly promises to overwhelm even the nations of the East. If the past struggle has produced even a few Indians who would dedicate themselves to the task of becoming Passive Resisters as nearly perfect as possible, they would not only have served themselves in the truest sense of the term, they would also have served humanity at large. Thus viewed, Passive Resistance is the noblest and the best education. It should come, not after the ordinary education in letters of children, but it should precede it. It will not be denied that a child, before it begins to write its alphabet and to gain worldly knowledge, should know what the soul is, what truth is, what love is, what powers are latent in the soul. It should be an essential of real education that a child should learn that, in the struggle of life, it can easily conquer hate by love, untruth by truth, violence by self-suffering. It was because I felt the force of this truth, that, during the latter part of the struggle, I endeavoured, as much as I could, to train the children at Tolstoy Farm and then at Phoenix along these lines, and one of the reasons for my departure to India is still further to realise, as I already do in part, my own imperfection as a Passive Resister, and then to try to perfect myself, for I believe that it is in India that the nearest approach to perfection is most possible.

Do you know of that article? - Yes, I have read it.

My Lords, it will be necessary for me to read another extract from Gandhi in order to lead on to some questions that I propose asking. It appears in a book, *Satyagraha in South Africa*, by Gandhi. I read from *Satyagraha in South Africa*, by M. K. Gandhi, published by the Navajivan Publishing House. The first edition was published in 1928, my Lord, and this is the revised second edition. I am reading from page 109:

None of us knew what name to give to our movement. I then used the term "passive resistance" in describing it. I did not quite understand the implications of "passive resistance" as I called it. I only knew that some new principle had come into being. As the struggle advanced, the phrase "passive resistance" gave rise to confusion and it appeared shameful to permit this great struggle to be known only by an English name. Again, that foreign phrase could hardly pass as current coin among the community. A small prize was therefore announced in *Indian Opinion* to be awarded to the reader who invented the best designation for our struggle.

I skip a few lines.

Shri Maganlal Gandhi was one of the competitors and he suggested the word "*Sadagraha*", meaning "firmness in a good cause". I liked the word, but it did not fully represent the whole idea I wished it to connote. I therefore corrected it to "*Satyagraha*". Truth (*Satya*) implies love, and firmness (*agraha*) engenders and therefore serves as a synonym for force. I thus began to call the Indian movement "*Satyagraha*", that is to say, the Force which is born of Truth and Love or non-violence, and gave up the use of the phrase "passive resistance", in connection with it, so much so that even in English writing we often avoided it and used instead the word "*Satyagraha*" itself or some other equivalent English phrase. This then was the genesis of the movement which came to be known as *Satyagraha*, and of the word used as a designation for it. Before we proceed any further with our history we shall do well to grasp the differences between passive resistance and *Satyagraha*, which is the subject of our next chapter.

Chapter XIII

SATYAGRAHA V. PASSIVE RESISTANCE

As the movement advanced, Englishmen too began to watch it with interest. Although the English newspapers in the Transvaal generally wrote in support of the Europeans and of the Black Act, they willingly published contributions by well-known Indians. They also published Indian representations to Government in full or at least a summary of these, sometimes sent their reporters to important meetings of the Indians,

and when such was not the case, made room for the brief reports we sent them.

These amenities were of course very useful to the community, but by and by some leading Europeans came to take interest in the movement as it progressed. One of these was Mr. Hosken, one of the magnates of Johannesburg. He had always been free from colour prejudice but his interest in the Indian question deepened after the starting of *Satyagraha*. The Europeans of Germiston, which is something like a suburb of Johannesburg, expressed a desire to hear me. A meeting was held, and introducing me and the movement I stood for to the audience, Mr. Hosken observed, "The Transvaal Indians have had recourse to passive resistance when all other means of securing redress proved to be of no avail. They do not enjoy the franchise. Numerically, they are only a few. They are weak and have no arms. Therefore they have taken to passive resistance which is a weapon of the weak." These observations took me by surprise, and the speech which I was going to make took an altogether different complexion in consequence. In contradicting Mr. Hosken, I defined our passive resistance as "soul force". I saw at this meeting that a use of the phrase "passive resistance" was apt to give rise to terrible misunderstanding. I will try to distinguish between passive resistance and soul force by amplifying the argument which I made before that meeting so as make things clearer.

I have no idea when the phrase "passive resistance" was first used in English and by whom. But among the English people, whenever a small minority did not approve of some obnoxious piece of legislation, instead of rising in rebellion they took the passive or milder step of not submitting to the law and inviting the penalties of such non-submission upon their heads. When the British Parliament passed the Education Act some years ago, the Non-conformists offered passive resistance under the leadership of Dr. Clifford. The great movement of the English women for the vote was also known as passive resistance. It was in view of these two cases that Mr. Hosken described passive resistance as a weapon of the weak or the voteless. Dr. Clifford and his friends had the vote, but as they were in a minority in the Parliament, they could not prevent the passage of the Education Act. That is to say, they were weak in numbers. Not that they were averse to the use of arms for the attainment of their aims, but they had no hope of succeeding by force of arms. And in a well-regulated state, recourse to arms every now and then in order to secure popular rights would defeat its own purpose. Again some of the Non-conformists would generally object to taking up arms even if it was a practical proposition. The suffragists had no franchise rights. They were weak in numbers as well as in physical force. Thus their case lent colour to Mr. Hosken's observations. The suffragist movement did not eschew the use of physical force. Some suffragists fired buildings and even assaulted men. I do not

think they ever intended to kill any one. But they did intend to thrash people when an opportunity occurred, and even thus to make things hot for them.

But brute force had absolutely no place in the Indian movement in any circumstance, and the reader will see, as we proceed, that no matter how badly they suffered, the *Satyagrahis* never used physical force, and that too although there were occasions when they were in a position to use it effectively. Again, although the Indians had no franchise and were weak, these considerations had nothing to do with the organisation of *Satyagraha*. This is not to say that the Indians would have taken to *Satyagraha* even if they had possessed arms or the franchise. Probably there would not have been any scope for *Satyagraha* if they had the franchise. If they had arms, the opposite party would have thought twice before antagonising them. One can therefore understand that people who possess arms would have fewer occasions for offering *Satyagraha*. My point is that I can definitely assert that in planning the Indian movement there never was the slightest thought given to the possibility or otherwise of offering armed resistance. *Satyagraha* is soul force pure and simple, and whenever and to whatever extent there is room for the use of arms or physical force or brute force, there and to that extent is there so much less possibility for soul force. These are purely antagonistic forces in my view, and I had full realisation of this antagonism even at the time of the advent of *Satyagraha*.

We will not stop here to consider whether these views are right or wrong. We are only concerned to note the distinction between passive resistance and *Satyagraha*, and we have seen that there is a great and fundamental difference between the two. If without understanding this, those who call themselves either passive resisters or *Satyagrahis* believe both to be one and the same thing, there would be injustice to both leading to untoward consequences. The result of our using the phrase "passive resistance" in South Africa was, not that people admired us by ascribing to us the bravery and the self-sacrifice of the suffragists but we were mistaken to be a danger to person and property which the suffragists were, and even a generous friend like Mr. Hosken imagined us to be weak. The power of suggestion is such, that a man at last becomes what he believes himself to be. If we continue to believe ourselves and let others believe, that we are weak and helpless and therefore offer passive resistance, our resistance would never make us strong, and at the earliest opportunity we would give up passive resistance as a weapon of the weak. On the other hand if we are *Satyagrahis* and offer *Satyagraha* believing ourselves to be strong, two clear consequences result from it. Fostering the idea of strength, we grow stronger and stronger every day. With the increase in our strength, our *Satyagraha* too becomes more effective and we would never be casting about for an opportunity to give it up. Again, while there

is no scope for love in passive resistance, on the other hand not only has hatred no place in *Satyagraha* but is a positive breach of its ruling principle. While in passive resistance there is a scope for the use of arms when a suitable occasion arrives, in *Satyagraha* physical force is forbidden even in the most favourable circumstances. Passive resistance is often looked upon as a preparation for the use of force while *Satyagraha* can never be utilised as such. Passive resistance may be offered side by side with the use of arms. *Satyagraha* and brute force, being each a negation of the other, can never go together. *Satyagraha* may be offered to one's nearest and dearest; passive resistance can never be offered to them unless of course they have ceased to be dear and become an object of hatred to us. In passive resistance there is always present an idea of harassing the other party and there is a simultaneous readiness to undergo any hardships entailed upon us by such activity; while in *Satyagraha* there is not the remotest idea of injuring the opponent. *Satyagraha* postulates the conquest of the adversary by suffering in one's own person.

These are the distinctions between the two forces. But I do not wish to suggest that the merits, or if you like, the defects of passive resistance thus enumerated are to be seen in every movement which passes by that name. But it can be shown that these defects have been noticed in many cases of passive resistance. Jesus Christ indeed has been acclaimed as the prince of passive resisters but I submit in that case passive resistance must mean *Satyagraha* and *Satyagraha* alone. There are not many cases in history of passive resistance in that sense. One of these is that of the Doukhobors of Russia cited by Tolstoy. The phrase passive resistance was not employed to denote the patient suffering of oppression by thousands of devout Christians in the early days of Christianity. I would therefore class them as *Satyagrahis*. And if their conduct be described as passive resistance, passive resistance becomes synonymous with *Satyagraha*. It has been my object in the present chapter to show that *Satyagraha* is essentially different from what people generally mean in English by the phrase "passive resistance".

While enumerating the characteristics of passive resistance, I had to sound a note of warning in order to avoid injustice being done to those who had recourse to it. It is also necessary to point out that I do not claim for people calling themselves *Satyagrahis* all the merits which I have described as being characteristic of *Satyagraha*. I am not unaware of the fact that many a *Satyagrahi* so called is an utter stranger to them. Many suppose *Satyagraha* to be a weapon of the weak. Others have said that it is a preparation for armed resistance. But I must repeat once more that it has not been my object to describe *Satyagrahis* as they are but to set forth the implications of *Satyagraha* and the characteristics of *Satyagrahis* as they ought to be.

In a word, we had to invent a new term clearly to denote the movement of the Indians in the Transvaal and to prevent its being confused with passive resistance generally so called. I have tried to show in the present chapter the various principles which were then held to be a part and parcel of the connotation of that term.

That ends the chapter. Does the South African Indian Congress accept this as a method of struggle up to this date? - Yes, accept this as a method of struggle.

Does the SAIC accept passive resistance as a method of struggle up to this day? *Satyagraha*? - Yes.

Could you explain to the Court the difference between *satyagraha* as a creed to be applied to all problems of human life, and simply as a method of dealing with one particular problem? - My Lord, Mahatma Gandhi practised *satyagraha* as a creed, in that he observed this in all aspects of his life. While the struggle which we are conducting now and as it was conducted during the time of Mahatma Gandhi here in this country, as well as the struggle which was conducted under the leadership of Mahatma Gandhi in India, was accepted by the organisation, that means the Indian Congress here and the Indian National Congress in India, as a method to achieve their aims through this non-violent form of struggle only. Apart from the struggle for the independence of India which Mahatma Gandhi carried on in India, he also practised his passive resistance movement through the various *ashrams* which he established throughout the country, where he wanted to bring about a change in outlook in the life of the people and lay a foundation for a life, whereby he would create a classless society. Now this, however, was not accepted by the organisation for achieving its aims. For the purpose of illustration we take in India the Indian National Congress: while striving for the liberation and freedom and for the independence of the country, the majority of the foremost and important leaders only accepted *satyagraha* or passive resistance for the achieving of those purposes. Similarly, we here too adopted this method of struggle in our organisation to achieve our aims through non-violence.

When you talk of India, did you say that the Indian National Congress did not accept it as a creed? - No.

What do you say about the South African Indian Congress? - I say that the South African Indian Congress has accepted this method for the attainment of its objectives as a political weapon. But the Congress has not accepted that as a creed as Mahatma Gandhi has accepted it.

MR. JUSTICE RUMPF:

Does that mean that in the South African Indian Congress, there may be people who refuse to use violence because they are against violence on principle, and there may also be people who refuse to use violence because the conditions are not suitable? - No, my Lord, there are people amongst the Indians who also believe in this as a creed, but the principle we have accepted in the Indian Congress is not to use violence at all in any form to achieve our aims, as they did in India.

Yes, I know. Is it possible that members of the South African Indian Congress have accepted this as a method of struggle? - Yes, My Lord.

Because they approach the matter in the same way as Gandhi has explained the people approach it - may approach it in England under the term passive resistance? - No. We will use the method of *satyagraha* as long as we strive for our rights, we will never use violence in our struggle. But apart from that in our practice generally it does not apply to us as it applied to Gandhi...

MR. KATHRADA:

How does the South African Indian Congress visualise the changes will be brought about through its struggle? - By the struggle which was conducted in the past, and as it has been conducted by the Congresses, we believe that by suffering and by sacrifices as one undergoes, we will be able to convince the authorities, the electorate, to negotiate with us.

Is this hope of the South African Indian Congress based on any historical fact? - Yes, that is based on the fact that when this sort of struggle was conducted in this country, Acts were repealed, statutes were changed, new ones were put on the record for the benefit of the people.

Can you think of any example? - Act 2 of 1907 was changed.

Could you give us some recent example? When you were answering my last questions, were you referring to the evidence that you have already given where certain improvements were brought about as a result of the passive resistance struggle in the early days? - Yes, the independence of India was gained through that method. Very recently here, for instance, the bus boycott which was conducted in Johannesburg, and the people walked from Alexandra Township eleven miles and back every day, gained the support of the people and eventually negotiations came about and agreement was reached.¹⁴

It has been suggested that when you get masses of people into action, other than voting at the ballot box, then you must expect that it is highly possible that

¹⁴ Over 50,000 Africans participated in a boycott of buses in Johannesburg which began on January 7, 1957, in protest against an increase in fares. It ended successfully after three months.

violence will result. What, in the view of the SAIC is the likelihood of violence resulting from such action, passive resistance action? - As far as the people who are engaging in the struggle and people who follow the struggle, they will never use violence, and will never approve any violence whatsoever. But there may be other elements outside the movement, and they may create some sort of violence which we may not be responsible for. Then again, for some reason or other, even the authorities may have to take action and - where violence may be meted out, or even shooting takes place and blood may flow. But we would never use any violence against anyone.

Were there any instances of violence in India during the struggles conducted under the leadership of Mahatma Gandhi? - Yes, practically every time when there was action taken in the form of defiance, for instance, there was violence at many places and at many stages, where the resisters in some cases were beaten, there were shootings which took place in many instances, and a lot of violence occurred and a lot of blood was shed. Even the different sections amongst the Indian people itself, for some reason or other fought amongst themselves violently. But as far as the Congress movement is concerned, that always remained non-violent.

In the event that violence arises during a struggle, would the SAIC abandon its policy? - No, not necessarily. We won't be responsible - it won't be our responsibility and we would never abandon the struggle.

What in the view of the South African Indian Congress would be the result of a policy of not using extra-parliamentary and sometimes unlawful forms of struggle? - The result would be to abandon our organisation, and accept the position as such.

What would happen to your grievances then? - Either it would go by default or some other sort of thing would be created by someone, but as far as we are concerned, the Congress will have to abandon, and we will be doing nothing.

In the view of the South African Indian Congress is there no middle road between the ballot box and the violent overthrow of the government? - We have no right to vote, and on the other hand we don't believe in violence at all in achieving our aims, and therefore there is a middle road, and that is the middle road on which we are treading at present.

Did the South African Indian Congress regard the late General Smuts as an easy or a difficult man to deal with? - He was very hard and perhaps difficult in a way to deal with.

I want to refer to a copy of a letter said to be sent by General Smuts to Mahatma Gandhi on Mahatma Gandhi's seventieth birthday.¹⁵ I want to quote

¹⁵ This was an article contributed by General Smuts to a book edited by Sir S.

from a book, *Tyranny of Colour*, on page 75. It is a book about the history of the Indian people in South Africa, written by P. S. Joshi. Do you know this book? - Yes.

"It was my fate to be the antagonist of a man for whom even then I had the highest respect... his activities at that time were very trying to me... His method was deliberately to break the law, and to organise his followers into a mass movement of passive resistance in disobedience to the law objected to. In both provinces a wild and disconcerting commotion was created, large numbers of Indians had to be imprisoned for lawless behaviour and Gandhi himself received - what no doubt he desired - a short period of rest and quiet in gaol. For him, everything went according to plan. For me the defender of law and order - there was the usual trying situation, the odium of carrying out a law which had not strong public support, and finally the discomfiture when the law had to be repealed. For him it was a successful coup. Nor was the personal touch wanting... In gaol he had prepared for me a very useful pair of sandals, which he presented to me when he was set free! I have worn these sandals for many a summer since then, even though I may feel that I am not worthy to stand in the shoes of so great a man!"

Does this sort of reaction in what you call the heart of the oppressor strengthen you in your hope that by this process your aims will be realised? - Yes.

When did Gandhi leave the Union? - In about 1914.

When was the SAIC formed? - In 1921.

What provincial bodies constitute the South African Indian Congress? - The Transvaal British Indian Association, the Natal Indian Congress and the Cape Indian Congress.

Was there any special reason why the South African Indian Congress should form in the year in which it was formed? - Yes, there was. After the war agitation again started against the Indians, and as a result of that the Indians of different provinces came together and formed this organisation. Also there was a commission appointed, an enquiry commission¹⁶, to make representations to that Commission as well, and practically for other purposes they thought fit that a central body should be formed then, and this organisation was formed.

Was any new legislation relating to compulsory segregation of Indians introduced in the early 'twenties? - Yes, in 1924, Class Areas Bill was introduced,

Radhakrishnan in tribute to Mahatma Gandhi: *Mahatma Gandhi: Essays and Reflections on his Life and Work Presented to him on his Seventieth Birthday, October 2, 1939*. London: Allen and Unwin, 1939.

¹⁶ The Asiatics Inquiry Commission, chaired by Sir Johannes Lange, 1920-21

and if that became a law, then there would be passive resistance against it, but this Bill did not become law for the reason that the Smuts Government fell and this Bill was dropped. But again in 1926 the Government of General Hertzog introduced a Bill called Areas Reservation Bill,¹⁷ and at that stage too the South African Indian Congress sent a deputation under the leadership of Dr. Abdurahman¹⁸ to India and as a result of that deputation - the deputation for representation to the Government of India - a delegation from the Government of India was able to come to this country, and the Indian delegation and the Government of South Africa entered into an agreement called the Cape Town Agreement of 1927...

In terms of this Agreement, what happened to the Areas Reservation Bill which was then before Parliament? - The Government dropped the Bill in terms of this Agreement.

Was agreement reached in connection with the assisted emigration of Indians from South Africa? - Yes, under Clause 3 of this Agreement.

Could you enlarge on that? - Indians who desire to leave this country would be assisted financially to a certain extent by this Government, and on reaching India, India undertook to see to their welfare... That was one of the points of the Agreement.

Was it also in terms of this Agreement that the South African Government undertook to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacities and opportunities? - Yes, that is generally known as the Upliftment of Indian Community. A provision was made to the effect that the Indians, those who remained in this country, were accepted as permanent population and the Union Government declared its firm belief in the principle that it was the duty of the Government to devise ways and means to take all possible steps for the uplifting of all sections of their permanent population to the full extent of their capacity and opportunity.

Is it also true that as a result of this Agreement the Government of India appointed an Agent to South Africa? - Yes, that is so.

Did the South African Indian Congress attach any importance to this Cape Town Agreement? - They attached very great importance to this Agreement, all along and even now.

Do you remember if during the `thirties any negotiations took place between the Indian community and the Government? - In 1930 again a Bill was introduced in the House of Parliament and as a result of that representations were made and

¹⁷ The Areas Reservation and Immigration and Registration (Further Provision) Bill, 1926

¹⁸ Dr. Abdulla Abdurahman

in terms of this Agreement, the Cape Town Agreement - it said there that the Government will review from time to time this Agreement - and another delegation (from India) came to this country when this Bill was before Parliament, and eventually it was altered to some extent and then the Bill was passed as an Act in 1932, known as the Asiatic Land Tenure Act. An undertaking was also given at the time that in terms of the Bill which was supposed to be passed, a Commission would be appointed, which was of course appointed, known as the Feetham Commission, and after long investigation, eventually in 1941, and in terms of that recommendation of that Commission, certain areas were released in proclaimed land for the occupation of Indians.

Now coming to the interim Act of 1939 to which you have already referred, when this Act was passed, were there new proposals for passive resistance? - Yes.

What steps were taken in this direction? - The Indian community decided in 1939 to launch a passive resistance movement, a meeting was held in July sometime, and the date was the 1st August, to launch a passive resistance movement against the Act.

Did the authorities do anything to prevent the Indian community from proceeding with the passive resistance campaign? - General Smuts got in touch with the British Government and the Government of India to ask Mahatma Gandhi to intervene in the matter, and the Government of India sent a special representative to see Mahatma Gandhi who was at Ahmedabad in those days... and from there he asked the Indian community here to postpone the passive resistance struggle for a brief period.

I want to refer again to a statement which is contained in *Tyranny of Colour*, page 260. The statement is said to have been made by Dr. Dadoo. Did he have anything to do with the proposed passive resistance at that time? - He was the leader appointed by the Indian community in the struggle...

Are you aware of a statement issued by Dr. Dadoo as a result of a message from Mahatma Gandhi? - Yes.

Was the statement issued by Dr. Dadoo on behalf of the Passive Resistance Council at the time? - Yes, I did serve on that Council at the time...

In a statement to the press suspending the passive resistance movement, Dr. Dadoo declared:

"Mahatma Gandhi has been our guide and mentor in all that the Passive Resistance Council has been doing in this matter. And we shall wholeheartedly await his advice; for we realise that his interest in the cause of the Indians in South Africa has not abated one whit, even though many years have elapsed since he left South Africa.

"I desire, however, to stress the fact that the Asiatics (Land and Trading) Act of 1939 aims at the virtual economic extinction of the Indian community of the Transvaal, and casts slur of inferiority on the whole Indian nation.

"The Passive Resistance Council sincerely hopes that the negotiations that are now proceeding will result in an honourable settlement."

Was that the statement issued by Dr. Dadoo? - Yes.

Did the outbreak of the last war in any way interfere with the plans for a large-scale passive resistance movement? - Yes, in September the war broke out and as a result of that the passive resistance was suspended and it was not embarked upon because of that.

In 1941, when the interim Act was renewed for a further two years, did any resistance take place? - Yes.

What was the nature of it? - Then it was a passive resistance, but in view of the fact that the war was on, a very limited form of resistance took place. The form was that a few stalls were set up in Johannesburg. The volunteers were very limited in number - there were ten or twelve - (they) sold goods without licences, and this sort of protest was carried on for about ten months and then it was suspended.

You have already, earlier in your evidence referred to the Asiatic Land Tenure Act of 1946. Did this Act give rise to widespread discontent amongst the Indian community? - Yes, very wide.

Were the grievances of the South African Indian community discussed at a conference of the South African Indian Congress? - Yes, the South African Indian Congress held in Cape Town in 1946.

Were you present at the conference? - Yes, I was present.

MR. JUSTICE BAKKER:

Mr. Kathrada, there is something I would like you to consider. I come back to the admissions made by Mr. Maisels on behalf of the defence, right at the outset, that the organisations mentioned by him worked together to overthrow the government or to change the government, - well, to work together to get a new government, I'll put it that way. Now the question between the defence and the Crown is whether that was with or without violence, and/or whether the state was being aimed at. And bearing in mind the cross-examination Mr. Maisels conducted against Professor Murray, I would like you to consider the question to

what extent it is relevant in view of the admissions, and in view of the issue between the Crown and the defence, to trace in this close detail the history of the Asiatic bills in South Africa, and the various forms of passive resistance. I don't know whether I have made myself clear, but I would like you to consider that. If you think it is relevant, then you must carry on but the issue really between you and the Crown is violence. Now Mr. Maisels, in his cross-examination of Professor Murray, devoted some considerable time tracing the history of Union legislation and how it affected the various people. I would like you just to consider whether it is necessary for you to go into this close detail. You can take your time about it, but just think about it.

MR. KATHRADA:

I would like to think about it, my Lord.

Did the conference appoint a deputation to see the Prime Minister? - Yes.

Were you a member of that deputation? - Yes.

Why did the deputation interview the Prime Minister? - We requested the Prime Minister not to proceed with the Bill which was before the Parliament at the time, and call a round table conference between the Governments of India and South Africa.

What was the outcome of the deputation? - General Smuts refused; he said that the Bill will become an Act and neither is he prepared to consult the Indian Government at that stage.

After consideration of the report of that deputation, did the South African Indian Congress Conference thereafter pass a resolution? - The outcome of this interview was reported to the Conference, and as a result of that a resolution was taken by the South African Indian Congress...

Will you quickly glance through this resolution of the South African Indian Congress held in Cape Town on the 12th February 1946? - Yes.

According to this resolution, one of the decisions taken was to send deputations from the South African Indian Congress to India, America and Britain? - That is correct.

And the other major decision taken by this Conference was to prepare the Indian community of South Africa for a passive resistance struggle, is that correct? - That is correct.

In pursuance of this resolution did deputations of the South African Indian Congress visit India, Britain and America? - That is correct.

What was the purpose of these deputations? - The purpose of the deputation which went to India was that they should interview the Government of India in order to bring about a round table conference between the South African Government and the Indian Government; failing a round table conference, if it is not accepted, then they will ask in terms of the resolution, the Government of India to withdraw the High Commissioner from this country, the High Commissioner for the Government of India, and to apply sanctions against South Africa. The South African Indian Congress (delegation) which went from here, on reaching India, immediately contacted Mahatma Gandhi, who drew up the memorandum, and the late Aga Khan was asked to lead the deputation to the Viceroy and a deputation was in fact led by Aga Khan, and representations were made in terms of this resolution. Furthermore the other purpose of the delegation was to enlighten the public of India on the position of the Indians of South Africa. Similarly the other two delegations which went to England and America, their purpose was also to enlighten the public opinion of Britain and America, as far as possible.

And further in pursuance of the resolution was a passive resistance movement started in South Africa? - This resolution also empowered the Congress to organise a passive resistance movement against the Act, and the provincial bodies, that means the Transvaal Indian Congress and the Natal Indian Congress, were asked by the South African Indian Congress to embark on planning of the passive resistance.

MR. JUSTICE RUMPF:

Did the Transvaal British Indian Association become the Transvaal Indian Congress? - That is right, my Lord, in 1927.

MR. KATHRADA:

When did passive resistance begin? - The Transvaal and the Natal Indian Congresses formed Passive Resistance Councils, and these two Councils got together and a Joint Passive Resistance Council was formed and set up a date, I think in June of that year, to start passive resistance, and passive resistance was resumed from some date in June.

You told us you were a member of the Transvaal Passive Resistance Council? - Yes.

Did the Passive Resistance Council call for volunteers? - Yes.

What were these volunteers called upon to do? - These volunteers were called upon to defy a law and submit themselves to go to jail.

Could you give us a bit more detail? What actually did they defy? - The Passive Resistance Council decided that a certain portion of land should be occupied by the volunteers which would mean that they were violating the provisions of the Act, and therefore they selected only one place in Durban, which property belonged to the municipality, and tents were pitched up and people started occupying that land; as a result of that the resisters were arrested.

Have you any idea how many volunteers were imprisoned during that campaign? - Round about two thousand people.

Were they only Indians? - The large bulk of the resisters were Indian, but members from the other communities were accepted and they also defied. There were Europeans, there were Coloureds, there were some Africans who took part in this defiance movement as volunteers.

My Lords, I would like to read a few extracts from the report of the Joint Passive Resistance Council which deals with the setting up of the Passive Resistance Council, the course of the campaign, the hooliganism that took place at the lot, organisations that were set up amongst other communities to support the campaign, etc.

MR. JUSTICE RUMPF:

Is that relevant? If we know the principle that here was a campaign, there was a submission to arrest, so many people were arrested, how are the details of that particular campaign relevant?

MR. KATHRADA:

Excepting My Lord that during the initial stages of the campaign there was great amount of provocation and actual violence inflicted on the resisters.

MR. JUSTICE KENNEDY:

That may be relevant, and I suggest that you put the direct question, if it is within the knowledge of the witness, then you have got direct evidence. If the witness knows that of his own knowledge, he can speak about it.

MR. KATHRADA:

I don't know if the witness was present at the actual scenes of violence...

Do you know of any scenes of violence which occurred at this place? - I knew, but I was not present, my Lord.

I take it you were on this Joint Passive Resistance Council, were you - Yes, I was.

And did you get reports in regard thereto? - Yes, my Lord...

You say that passive resistance actually started in June of 1946? - Yes.

Was it reported to the Joint Passive Resistance Council that acts of violence took place at the resistance plot? - Yes.

Who was responsible for these acts of violence, according to the report? - It was, according to the report, some hooligans, not the Indians. Hooligan elements which came to the plot, they burnt the tents, and even assaulted some of the resisters.

Was there any retaliation on the part of the volunteers? - No, none whatsoever, and it was seen that no fighting should occur, although there was a large crowd of Indians who were not resisters, and even they were all kept back and not to fight and make it a racial issue first of all, and secondly the resisters of course cannot indulge in violence at all. But even those who were not volunteers, they were also asked, and they obeyed the command, and no violence took place from the Indian side.

Did this violence continue for some days? - Yes.

To your knowledge, did the police intervene? Or was it reported to the Joint Passive Resistance Council? - Unless I see the report I won't remember all that.

According to the report, hooliganism began on the 16th of June and continued until the 24th when the District Commandant of Police read a Proclamation under the Riotous Assemblies Act, prohibiting any gathering within five hundred yards of the intersection of Gale Street and Umbilo Road? - Yes.

Do you remember...

MR. JUSTICE BEKKER:

May I just interrupt here. After that, did the passive resisters still continue? - Yes.

The reading of the Riotous Assemblies Act, was that to stop hooliganism? - That is right.

And did it stop it? - The struggle went on, the rioting stopped.

The violence stopped? - Yes.

MR. JUSTICE RUMPF:

You mean the volunteers were still camping on the plot of land? - They were, and eventually an arrangement was arrived at with the authorities, that they would simply enter the area, their names would be taken down, and the following day they would appear in the Court.

Was that after the reading of the...? - After that.

After the reading, they didn't continue to stay on the plot in a group? - No, they came back after that. They first left and then they came back, and then this sort of arrangement was arrived at.

They just gave their names, and then they would leave the plot? - They would leave the plot and the following day they would attend the Court, where they would be sentenced.

MR. JUSTICE BEKKER:

These hooligans, who were they? - Europeans.

MR. KATHRADA:

Do you recall if during the Passive Resistance Campaign, any organisation was set up amongst Europeans in support of the campaign? - Yes, there was one in Durban, the Council of Human Rights, and one was in Johannesburg, the Council of Civil Rights¹⁹ or something to that effect.

I am leaving the passive resistance movement. You will recall that at the general elections of 1948, the Nationalist Party came into power? - Yes.

MR. JUSTICE BEKKER:

Before you go on, what happened as a result of the deputations which went to India and Britain and America? What became of that? - They came back, and the Government of India withdrew the High Commissioner in terms of what the deputation asked the Government of India to do. There was no round table conference - the Government of South Africa did not accede to that - and as a result of that the High Commissioner was called back.

Was that before May of 1948? Was the High Commissioner withdrawn before 1948? - Yes, before the struggle started, and economic sanctions were applied against South Africa, that means they (India) stopped trading with

¹⁹ Council for Asiatic Rights, Johannesburg

South Africa.²⁰ The deputations which went to England and America, they held quite a number of meetings, saw important people in Britain, and the one which went to America, they assisted the Indian delegation who took up this matter at the United Nations.

MR. KATHRADA:

Prior to the Nationalist Party's return to power, did they publish or did it publish what it called its "Indian Policy"? - Yes, I believe so.

Was this so-called Indian policy printed in an election bulletin of the Nationalist Party called *National News*? - Yes.

Were extracts from the *National News* published in a newspaper called the *Passive Resister*? - Yes.

What newspaper was this *Passive Resister*? - The *Passive Resister* was a newspaper which was conducted by the Joint Passive Resistance Council for the Transvaal, giving the views and the news of the passive resistance.

I would like to hand you a photostat sheet from the *Passive Resister*... Do you recognise this to be a passage from the *Passive Resister*? - Yes.

Now I want to briefly read the six main points of what purports to be the Nationalist Party's Indian policy.

"1. Repatriation. The Party in collaboration with India and/or other countries will strive to repatriate or transfer elsewhere as many Indians as possible.

2. Indian Immigration and Penetration. The prohibition of (a) Indian penetration and (b) movement and penetration must continue, and must be applied more strictly.

3. The Cape. The Cape urban areas must be protected against Indian penetration.

4. Mixed Living. The Indians must not be allowed to live amongst other sections of the population.

5. Trading Licence Restrictions. The granting of trading licences to

²⁰ On July 17, 1946, the Government of India prohibited trade with South Africa. It had earlier given notification of the termination of the trade agreement with South Africa, and recalled its High Commissioner from South Africa.

On June 22, 1946, it sent a letter to the Secretary-General of the United Nations requesting that the question of the treatment of Indians in the Union of South Africa be included in the provisional agenda of the General Assembly of the United Nations.

Indians outside their own area must be curtailed.

6. Family allowances. Family allowances to Indians must be stopped."

Was that to your knowledge the policy of the Nationalist Party before it came into power? - Yes...

Shortly after the election of the Nationalist Party to the Government, did the Passive Resistance Council take any decision in regard to the continuation of the passive resistance campaign? - Yes.. in May 1948 when the Smuts Government lost the election and the Nationalist Party formed the government, we discussed this matter in the Joint Passive Resistance Council and decided to suspend the struggle, because the United Party was actually responsible for the passing of the Act... and we in fact did suspend the struggle and immediately started communicating with the Minister, more particularly the Prime Minister, on the subject.

The Prime Minister referred your communication to the Minister of the Interior? - Yes, that is so.

And did the Congresses then receive a letter from Dr. Donges²¹ who I believe was the Minister of the Interior at the time? - That is right.

My Lords, I have a further copy of the *Passive Resister* in which this letter was printed...

MR. JUSTICE RUMPF:

This will be Z. 15.

MR. KATHRADA:

Now in reply to your first letter to the Prime Minister, was the following the letter that you received from Dr. Donges?²²

Sir,

Your letter of the 4th ultimo to the Private Secretary to the Honourable Prime Minister has been referred to me by the Prime Minister.

I note the request of your two executive committees to the Prime Minister to meet a joint deputation to discuss certain difficulties in regard

²¹ T. E. Donges, the Minister of the Interior

²² The following two letters were taken from *Passive Resister*, Johannesburg, August 6, 1948. The letter from Dr. Donges was dated July 12, 1948. The Indian Congresses decided, at a meeting on July 31-August 1, 1948, on the subsequent letter to the Prime Minister.

to the Asiatic Land Tenure and Indian Representation Act, 1946. As I am the responsible Minister, I shall regard the request for an interview as directed to me.

I am at all times prepared to discuss with Indians in South Africa in a friendly and co-operative spirit any matter affecting the interests of Indians here. But I am not prepared to extend this facility to any organisation of Indians which sponsors or associates itself with any organised flouting of the laws of the country. I also exclude organisations which are communistic in their orientation or leadership or which while claiming to be composed of Union citizens, invoke the political aid of another country. At the moment the Natal and Transvaal Indian Congresses do not fall within the ambit of organisations with which I am prepared to discuss, indeed with which I could usefully discuss, matters affecting the Indian population in the proper spirit. I note that your organisations have temporarily suspended organised law-breaking. While not prepared to judge the motives or reasons for this step, I can only hope that it will be followed within the near future by the permanent abrogation of organised law-breaking and the repudiation of foreign ideological conceptions which are inimical to the racial peace in South Africa. If my hopes are realised, the way will be paved for the desired interview on a mutually convenient date. Until then, other Indian organisations which satisfy the tests I have enunciated above, will have to serve as the channel through which the Indian population in South Africa may approach the Government for a discussion of any matter affecting its interests.

Yours faithfully,

(Signed) T. E. Donges
Minister of the Interior

Just below that appears the text of the reply sent to this letter by the Joint Passive Resistance Council of the Natal and Transvaal Indian Congresses.

Sir,

We are directed to acknowledge the receipt of your letter dated 2nd July, 1948. It is the desire of the Transvaal and Natal Indian Congresses to make the following observations for the earnest consideration of the Honourable the Prime Minister.

(a) The history of the Indian in South Africa is one long record of his steadily deteriorating status and fast dwindling rights. He was deprived of the Parliamentary franchise in Natal in 1896. In 1924, the Municipal franchise was taken away from him. Earlier his trading and property rights

in the Transvaal were restricted. The years have witnessed the growth of a huge body of anti-Indian legislation culminating in the Asiatic Land Tenure and Indian Representation Act of 1946.

(b) This unjust law aroused the deep indignation of Indians throughout South Africa. Dispossessed of the franchise, all constitutional means of obtaining redress were soon exhausted without avail. The unyielding attitude of the Government left the Indian people with no other alternative but to launch a campaign of Passive Resistance in protest against a racially oppressive law.

(c) With the return of the present Government to office as a result of the recent General Elections, in which the Indian people of South Africa have had no part, our Congresses suspended their Passive Resistance struggle and sought an interview with the Honourable the Prime Minister to discuss the many disabilities confronting them, more particularly in relation to the above-mentioned Act and to secure from him a statement of the Government's policy in regard to the Indian community.

(d) We recall that in reply to our communication dated the 25th June, 1948, the Honourable the Prime Minister said he was unable to meet us as he had to proceed to Cape Town on urgent business. He referred the matter to the Honourable the Minister of the Interior. To our further request the Honourable the Prime Minister stated that his heavy tasks and commitments precluded an interview with him and that we should approach the Honourable the Minister of Interior.

(e) In the circumstances, our Congresses are concerned at the inaccessibility of the Honourable the Prime Minister at a juncture when vital questions affecting the Indian community will call for pressing solution.

(f) Our Congresses have noted the suggestion of the Honourable the Prime Minister in your last communication that the Honourable the Minister of the Interior should be approached with a view to an interview.

However, before we could attend to this matter, the Honourable the Minister of the Interior has already, by letter dated the 12th July, 1948, expressed his unwillingness to meet our Congresses. He has raised objections which are to be greatly deplored, for they run counter to all constitutional and democratic practice. We view such an attitude with grave apprehension, more particularly when it is taken against the accredited national representatives of a community who, deprived of the Parliamentary franchise, has no other channel of placing its views before the Government.

(g) The objections of the Honourable the Minister of Interior constitute so serious a departure from ordinary democratic principles and procedure, that our Congresses cannot but draw the Honourable the Prime Minister's attention to its wider implications and significance.

(h) We cannot understand the Honourable Minister concerning himself with the internal composition of the memberships of our Congresses. It is not for the Honourable Minister, but for the Indian people themselves to determine the composition of their organisations. The Honourable Minister should be satisfied with the fact that we are the largest Indian political organisation in the country, whose membership is open to all Indians. The Natal Indian Congress has 35,000 registered members. The present officials of the Transvaal Indian Congress were elected by 12,000 votes without any opposition.

(i) Indians in South Africa have always maintained their unfettered right to seek the goodwill of India and the support of world opinion in their struggle for full democratic rights in their land of birth and adoption. The solution here lies with the Government of South Africa. So long as the Indian is the victim of unjust racial discrimination, so long as franchise, the basic pillar of fundamental human rights, is denied to him, for so long will this position remain.

(j) The Honourable Minister refers to organised flouting of the law. We assume that this reference is to the Passive Resistance Movement. There is no question that the Asiatic Act of 1946 is directed against the interests of the Indian community of the Transvaal and Natal, and seeks their ultimate economic destruction, social degradation and national humiliation. In such circumstances, Indians have traditionally chosen to defy such an unjust law and accept the penalties imposed. Here too, the solution lies with the Government.

Our Congresses, Sir, record with great regret the fact that the Honourable the Prime Minister has been unable to grant us an interview. He has referred us to the Honourable the Minister, who has refused to meet our organisations. The primary purpose envisaged by our Congresses in seeking the interview was to discover the policy of the new Government in respect of the following disabilities under which the Indians suffer:

1. Unjust discrimination in terms of the Asiatic Land Tenure and Indian Representation Act, 1946.

2. The continued denial of the franchise.

3. The restrictions on movement from one Province of South Africa to another.

4. The unjust discrimination against Indians in laws and their operation.

5. The question of a Round Table Conference between the Governments of India and the Union of South Africa, arising from the resolution adopted at the 1946 Session of the General Assembly of the United Nations.

What we require is an unequivocal statement of policy from the new Government in regard to the above matters, especially regarding our status as part of the South African nation. Such a declaration, we can seek only from the Honourable the Prime Minister, the head of the Government.

We hope, Sir, we have made our position clear. Should the Honourable the Prime Minister find it possible to grant us an interview, we shall readily wait on him at his early convenience. Should he not be able to do so, we anticipate an early statement on the above-mentioned matters that would appraise us on Government policy thereon.

Yours faithfully,

Y. A. Cachalia
Joint Secretary, Transvaal Indian Congress

D. Singh
General Secretary, Natal Indian Congress

Were these the texts of the correspondence which passed between your organisation and the authorities? - Yes.

You have already referred to the 1947 Report in which mention is made of the fact that the African National Congress sympathised with the present resistance struggle, and that Africans actually participated in the campaign? - That is correct.

Is it correct that in March or thereabouts in 1947, a meeting took place between representatives of the Natal Indian Congress, the Transvaal Indian Congress and the African National Congress?

MR. JUSTICE BEKKER

Before you go on, what was the outcome of these letters? - There was no reply to this letter, My Lord; no policy was announced.

MR. JUSTICE RUMPF:

I see that in the letter from the Minister of the Interior there is a statement that

he was not prepared to negotiate with organisations which are communistic in their orientation or leadership? - Yes.

Were there Communists as leaders of your organisation at the time? - I don't know what this letter meant, but Dr. Dadoo²³ was a member of the Communist Party.

Was he President of the Indian Congress...? - Yes.

The South African Indian Congress? - No, the Transvaal Indian Congress.

Who was the President of the South African Indian Congress? - At that time, Mr. Ahmed Ismail.

Did the South African Indian Congress consist of the Natal Indian Congress, the Transvaal Indian Congress and the Cape Indian Congress? - Yes.

Were there other leaders of the Transvaal Indian Congress who were members of the Communist Party at that time? - No, I don't think so. No officials were members of the Party.

MR. KATHRADA:

I was asking you about a meeting between representatives of the Natal and Transvaal Indian Congresses, and the African National Congress. Did you know that such a meeting took place in 1947? - Yes.

Did you know who the representatives were who participated in this meeting? - Dr. Xuma,²⁴ the President of the African National Congress, Dr. Naicker,²⁵ the President of the Natal Indian Congress, and Dr. Dadoo, the President of the Transvaal Indian Congress, met.

Was a statement of policy issued after this meeting? - Yes.

What is the statement generally known as in Congress circles? - It is known as Xuma-Dadoo-Naicker Pact.

I want to refer to *Passive Resister*, Friday, March 14, 1947. There is an article headed "Non-European Unity Declaration". Is that the Dadoo-Naicker-Xuma Pact that you referred to? - That is correct.

I would like to read the text of this.

²³ Dr. Yusuf M. Dadoo, then President of the Transvaal Indian Congress

²⁴ Dr. A. B. Xuma

²⁵ Dr. G. M. Naicker

"This Joint Meeting between the representatives of the African National Congress and the Natal and Transvaal Indian Congresses, having fully realised the urgency of cooperation between the Non-European peoples and other democratic forces for the attainment of basic human rights and full citizenship for all sections of the South African people, has resolved that a Joint Declaration of cooperation is imperative for the working out of a practical basis of cooperation between the national organisations of the Non-European peoples.

This Joint Meeting declares its sincerest conviction that for the future progress, goodwill, good race relations, and for the building of a united, greater and free South Africa, full franchise rights must be extended to all sections of the South African people, and to this end this Joint Meeting pledges the fullest cooperation between the African and Indian peoples and appeals to all democratic and freedom-loving citizens of South Africa to support fully and cooperate in this struggle for:

- 1) Full franchise.
- 2) Equal economic and industrial rights and opportunities and the recognition of African trade unions under the Industrial Conciliation Act.
- 3) The removal of all land restrictions against Non-Europeans and the provision of adequate housing facilities for all Non-Europeans.
- 4) The extension of free and compulsory education to Non-Europeans.
- 5) Guaranteeing freedom of movement and the abolition of Pass Laws against the African people and the Provincial barriers against Indians.
- 6) And the removal of all discriminatory and oppressive legislations from the Union's statute book."

Does this correctly set out the Dadoo-Xuma-Naicker Pact? - Yes.

In 1949 did rioting occur between Africans and Indians in Durban? - That is correct.

Did the African National Congress and the Indian Congresses adopt an attitude towards these riots? - Yes.

What was their attitude? - The attitude was to stop the rioting immediately.

I understand that the Congresses took certain specific steps to bring the rioting to an end? - That is correct.

What were these steps? - The President of the ANC Natal and the President of the Indian Congress of Natal made joint appeals to stop rioting, and bring about peace and better understanding amongst both sections of the people.

Did you personally visit Durban at that time? - Yes, the President-General of the African National Congress was in Johannesburg. I went with him specifically during the time of the riots to see that the rioters stopped.

Was it Dr. Xuma? - Yes.

Was there a Commission of Enquiry appointed after the riots? - Yes, there was.

And did the Congresses make joint representations to this Enquiry? - Yes, the Executive Committees of both the Congresses met in Durban and they decided at the time to make joint representations to the Commission, and they in fact made joint representation through advocates.

Is it correct that in 1949²⁶ there was in addition cooperation between the African National Congress and the Transvaal Indian Congress, which resulted in the first joint major campaign by the two organisations? - Yes.

Did this campaign have anything to do with banning orders? - Yes.

On whom was the banning order imposed? - Dr. Dadoo, the President of the Transvaal Indian Congress, went to Cape on Congress work. Then he was served notice under the Riotous Assemblies Act banning him from attending gatherings and attending meetings. As a result of that the Transvaal Indian Congress and the Transvaal African National Congress met and decided to launch a protest against the banning, and they also decided to hold a Free Speech Convention. That was the decision taken, yes.

What was the purpose of this convention, do you remember? - On the question of freedom of speech, that people should not be banned, but that they should be allowed to propagate their convictions.

Did this convention take any decisions with regard to any form of action? - Yes. They decided also, as a means of protest, for a stoppage of work for one day, and the 1st of May was accepted for that purpose.

Did the Transvaal Indian Congress in fact take steps to implement this decision? - Yes.

²⁶ This should be "1950".

What form did the demonstration as a whole take? - On the 1st of May there was stoppage of work in the Transvaal, more particularly on the Reef. The Indians, those who were working, they did not go to work; and those who had businesses, they closed their businesses, they closed their shops.

As far as the Congress was concerned, was it a peaceful demonstration? - Yes, certainly.

Did any disturbance occur on that date? - Yes, in the evening there were some shootings in Alexandra Township, in Benoni, and also at Orlando. Some lives were lost, I think about eighteen or twenty.

You say lives were lost. Who were these people who were killed? - The Africans were killed from the shooting of the police.

Were any policemen injured to your knowledge? - No, none.

Later on, in May, did a conference take place between representatives of the African National Congress and the South African Indian Congress? - Yes, on the 14th of May.

What was the purpose of this conference? - The purpose of this conference was to protest and take some positive action against the bills which were before the Parliament, more particularly the Suppression of Communist Bill and the Group Areas Bill.

And did the conference decide on the nature of any such action to be taken? - Yes, it was decided that June 26th be proclaimed a day of protest against the two measures, as well as a day of mourning for those people who were killed on the 1st of May.

Was the date, the 26th June, fixed by any Congress official? - No, it was left to the President-General of the African National Congress, and Dr. Moroka,²⁷ the President-General of the African National Congress, fixed a date.

Now on the 26th June, 1950, was there in fact a stoppage of work? - Yes.

Was the stoppage restricted to any particular area? - No, this was a Union-wide stoppage of work.

Can you give any idea of the extent of the stoppage in the main centres? - I think it was just over 60 percent. The reports showed that there was over 60 percent success of the stoppage of work, taking all in all.

MR. JUSTICE RUMPF:

²⁷ Dr. J. S. Moroka, President-General of ANC from 1949 to 1952

Sixty percent of which people stopped work? - All, that means the Indians, the Coloureds and the Africans. For instance, my Lord, if you take Natal, the bulk of the Indian population there who are workers stopped work in Durban.

This is 60 percent of the total population except the Whites? - That is right, of the non-Europeans.

MR. KATHRADA:

We have referred yesterday and today to the conference of the South African Indian Congress held in 1950 in Johannesburg? - Yes.

We have also referred to a resolution passed at that conference on the need for cooperation between the Indian community and other communities? - That is so.

Up to the time of your banning, was there any amendment or any change made to this attitude, to the attitude expressed in that resolution? - Of cooperation?

Yes? - No.

Has this resolution, as far as you are concerned, been the guiding policy of Congress since its adoption? - Quite so.

My Lords, I am now proceeding to the Defiance Campaign. I wanted to start off by reading the letters which passed between the Congresses and the Government. Are you aware of a Joint Planning Council that was established in 1951 by the South African Indian Congress and the African National Congress? - Yes.

What was the purpose of this Joint Planning Council? - The purpose was to inquire and work out the details of how the defiance movement or the passive resistance could be launched.

Did the Joint Planning Council prepare a plan which was submitted to the African National Congress and to the South African Indian Congress? - Yes, that is so...

I would like you to have a look at the plan. My Lord, I am informed that our copy of the record is in the prison library, but I will continue, my Lord. How would you describe the nature of the method suggested in this plan? - The method was based on passive resistance lines, on the lines of passive resistance.

Does the plan bear any resemblance to the passive resistance campaign of 1946 conducted by the Transvaal and Natal Indian Congresses? - Yes, it was based on those lines.

JUNE 23, 1960

... This is headed "Report of the Joint Planning Council of the African National Congress and the South African Indian Congress". Now, Mr. Cachalia, does this Plan or was this Plan drawn up in connection with the campaign for the Defiance of Unjust Laws? - That is so...

MR. JUSTICE RUMPF:

Well, it had better be typed in at this point of the record.

MR. KATHRADA:

Yes, my Lord.

**REPORT OF THE JOINT PLANNING COUNCIL OF THE
AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN
INDIAN CONGRESS, SUBMITTED FOR CONSIDERATION AT
THE FORTHCOMING NATIONAL CONFERENCE OF THE
AFRICAN NATIONAL CONGRESS AND THE SOUTH AFRICAN
INDIAN CONGRESS RESPECTIVELY**

To the President-General and members of the Executive Committee of the African National Congress and the President and Councillors of the South African Indian Congress:

WHEREAS the African National Congress, at the meeting of its National Executive, held on 17th June 1951, decided to invite all other National Executives of the national organisations of the non-European people of South Africa to a Conference to place before them a programme of direct action, and,

WHEREAS a Joint Conference of the National Executives of the African National Congress and the South African Indian Congress and the representatives of the Franchise Action Council (Cape) met at Johannesburg on the 29th July, 1951, and

WHEREAS it was resolved at the aforesaid Conference:

(1) to declare war on Pass Laws and Stock Limitation, the Group Areas

Act, the Voters' Representation Act, the Suppression of Communism Act and the Bantu Authorities Act;

(2) to embark upon an immediate mass campaign for the repeal of these oppressive laws, and

(3) to establish a Joint Planning Council to co-ordinate the efforts of the national organisations of the African, Indian and Coloured peoples in this mass campaign.

NOW THEREFORE, the Joint Planning Council, as constituted by the foregoing resolution, have the honour to report to the African National Congress and the South African Indian Congress as follows:

1

We, the undersigned, were constituted into a Joint Planning Council in terms of the resolution adopted at the Joint Conference of the Executives of the African National Congress and the South African Indian Congress and the representatives of the Franchise Action Council of the Cape, held at Johannesburg on the 29th July, 1951. Dr. J. S. Moroka, the President-General of the African National Congress, was elected as the Chairman and of the four remaining members of the Council, two each were nominated by the executive organs of the African National Congress and the South African Indian Congress.

2

We are, in terms of the resolution mentioned above, charged with the task of co-ordinating the efforts of the national organisations of the African, Indian and the Coloured peoples in a mass campaign agreed upon at the Joint Conference for the repeal of the Pass Laws, the Group Areas Act, the Voters' Representation Act, the Suppression of Communism Act, the Bantu Authorities Act, and for the withdrawal of the policy of stock limitation and the so-called rehabilitation scheme.

3

Having given due and serious attention to the task before us, we have great pleasure in recommending the following plan of action to the African National Congress and the South African Indian Congress for consideration and decision at their forthcoming annual Conferences.

4

The African National Congress, in Conference assembled at Bloemfontein on the 15th-17th December, 1951, should call upon the Union Government to repeal the aforementioned acts by not later than 29th February, 1952. This call should be supported by the Conference of the South African Indian Congress and by all other democratic organisations which find themselves in full agreement with it.

5

In the event of the Government failing to take action for the repeal of these Acts which cannot be tolerated by the people any longer, the two Congresses will embark upon mass action for a redress of the just and legitimate grievances of the majority of the South African people. It is our considered opinion that such mass action should commence on the 6th April, 1952, the Van Riebeeck Tercentenary. We consider this day to be most appropriate for the commencement of the struggle as it marks one of the greatest turning points in South African history by the advent of European settlers in this country, followed by colonial and imperialist exploitation which has degraded, humiliated and kept in bondage the vast masses of the non-white people.

Or, alternatively, on June 26th, 1952. We consider this day equally as significant as April the 6th for the commencement of the struggle as it also ranks as one of the greatest turning points in South African history. On this day we commemorate the National Day of Protest held on 26th June, 1950, the day on which on the call of the President-General of the African National Congress, Dr. J. S. Moroka, this country witnessed the greatest demonstration of fraternal solidarity and unity of purpose on the part of all sections of the Non-European people in the national protest against unjust laws. The 26th June was one of the first steps towards freedom. It is an historical duty that on this day we should pay tribute to the fighting spirit, social responsibility and political understanding of our people; remember the brave sacrifices of the people and pay our homage to all those who had given their very lives in the struggle for freedom.

Although we have suggested two alternative dates, the Joint Planning Council strongly favours the earlier date as it considers that three calendar months would give the people ample time to set the machinery of struggle into motion.

6

With regard to the form of struggle best suited to our conditions we have been constrained to bear in mind the political and economic set-up of our country, the relationship of the rural to the urban population, the development of the trade union movement with particular reference to the

disabilities and state of organisation of the non-white workers, the economic status of the various sections of the non-white people and the level of organisation of the National Liberatory movements. We are therefore of the opinion that in these given historical conditions the forms of struggle for obtaining the repeal of unjust laws which should be considered are:

- (a) defiance of unjust laws; and
- (b) industrial action.

7

In dealing with the two forms of struggle mentioned in paragraph six, we feel it necessary to reiterate the following fundamental principle which is the kernel of our struggle for freedom:

All people irrespective of the national groups they may belong to, and irrespective of the colour of their skin, are entitled to live a full and free life on the basis of the fullest equality. Full democratic rights with a direct say in the affairs of the Government are the inalienable rights of every individual - a right which in South Africa must be realised now if the country is to be saved from social chaos and tyranny and from the evils arising out of the existing denial of franchise rights to vast masses of the population on grounds of race and colour. The struggle which the national organisations of the non-European people are conducting is not directed against any race or national group but against the unjust laws which keep in perpetual subjection and misery vast sections of the population. It is for the transformation or creation of conditions which will restore human dignity, equality and freedom to every South African.

We believe that without realisation of these principles, race hatred and bitterness cannot be eliminated and the overwhelming majority of the people cannot find a firm foundation for progress and happiness in South Africa.

It is to be noted, however, that the present campaign of defiance of unjust laws is only directed for the purposes of securing the repeal of those unjust laws mentioned in the resolution of the Joint Conference.

8

Plan of Action. We recommend that the struggle for securing the repeal of unjust laws be Defiance of Unjust Laws based on non-cooperation. Defiance of unjust laws should take the form of committing breaches of certain selected laws and regulations which are undemocratic, unjust,

racially discriminatory and repugnant to the natural rights of man.

Defiance of Unjust Laws should be planned into three stages - although the timing would to a large extent depend on the progress, development and the outcome of the previous stage. Participation in this campaign will be on a volunteer basis, such volunteers to undergo a period of training before the campaign begins.

Three stages of Defiance of Unjust Laws:

(a) *First Stage*. Commencement of the struggle by calling upon selected and trained persons to go into action in the big centres, e.g., Johannesburg, Cape Town, Bloemfontein, Port Elizabeth and Durban.

(b) *Second Stage*. Number of volunteer corps to be increased as well as the number of centres of operation.

(c) *Third Stage*. This is the stage of mass action during which, as far as possible, the struggle should broaden out on a country-wide scale and assume a general mass character. For its success preparations on a mass scale to cover the people both in the urban and rural areas would be necessary.

9

Joint Planning Council. In order to prosecute and put into effect the plan of Defiance of Unjust Laws and in order to co-ordinate the efforts of the various national groups, as well as of the various centres, both urban and rural, it will be necessary for the Planning Council from time to time to make recommendations to the Executive Committees of the national organisations who will jointly conduct, prosecute, direct and co-ordinate the Campaign of Defiance of Unjust Laws as agreed upon by the Conference of the African National Congress and supported by the Conference of the South African Indian Congress. The Council must be empowered:

(a) to co-opt members to the Council and fill vacancies with the approval of the Executive Organs of the African National Congress and the South African Indian Congress.

(b) Invite representatives from Non-European organisations which are in full agreement with, and active participants in, the campaign, to serve as non-voting members of the Council.

(c) To frame rules and regulations for the guidance of the campaign

for approval by the National Executive.

(d) To set up provincial, regional and/or local councils within the framework of the existing organisations.

(e) Issue instructions for the organisation of volunteer corps and frame the necessary code of discipline for these volunteers.

10

Under the direction of the Joint Executives, a provincial, regional or where possible local council will have the primary task of organising and enrolling volunteers into volunteer corps on the following lines:

(a) A leader to be in charge of each volunteer corps for the maintenance of order and discipline in terms of the "code of discipline" and for leading the corps into action when called upon to do so.

(b) Corps to consist of members of both sexes.

(c) The colours of the African National Congress - black, green and gold - shall be the emblem of the Volunteer Corps.

(d) Each unit of the Volunteer Corps shall consist of members of the organisation to which they belong, viz., ANC, SAIC, FAC. The Coloured organisations in the provinces of Natal, the Orange Free State and the Transvaal, participating in the campaign with the approval of the Joint Planning and Directing Council, shall also be allowed to form units of the Volunteer Corps.

(e) In certain cases, where a law or regulation to be defied applies commonly to all groups, a mixed unit may be allowed to be formed of members of various organisations participating in the campaign.

11

Laws to be tackled. In recommending laws and regulations which should be tackled we have borne in mind the Laws which are most obnoxious and which are capable of being defied.

The African National Congress

Insofar as the African National Congress is concerned, the laws which stand out for attack are naturally the Pass Laws and the Regulations relating to Stock Limitation.

Method of Struggle on the Pass Laws:

- (a) A Unit of Volunteer Corps should be called upon to defy a certain aspect of the Pass Laws, e.g., enter a location without a permit. The Unit chosen goes into action on the appointed day, enters the location and holds a meeting. If confronted by the authorities, the leader and all the members of the Unit court arrest and bear the penalty of imprisonment.
- (b) Selected leaders to declare that they will not carry any form of passes including the Exemption Pass and thus be prepared to bear the penalty of the law.
- (c) Other forms of struggle on the Pass Laws can also be undertaken depending on the conditions in the different areas throughout the country.

Rural Action

Whilst the Volunteers go into action on the Pass Laws in the urban areas, the people in the rural areas should be mobilised to resist the culling of the cattle and stock limitation.

- (a) Stock Limitation: People in the rural areas to be asked not to cooperate with the authorities in any way in culling cattle or limiting livestock.
- (b) Meetings and demonstrations to be held.
- (c) Regional Conferences: Such Conferences in the rural areas should be called to discuss the problems of the people and to decide on the most suitable form of Defiance of Unjust Laws in the area.

The South African Indian Congress

Insofar as appropriate action by the South African Indian Congress is concerned, the conditions and effects of the laws vary in the three provinces, but we submit the following for the consideration of the South African Indian Congress:

- (a) Provincial barriers
- (b) Apartheid laws such as segregation in trains, post offices, railway stations, etc.

(e) Group Areas Act - if and when possible.

The Franchise Action Council

(a) General apartheid segregation in post offices, railway stations, trains, etc.

(b) Group Areas Act - if and when possible.

Both (a) and (b) will apply to the Coloured people in the other provinces as well.

In the Cape a strong possibility exists of having mixed units rather than having separate national organisation units.

12

The Population Registration Act

During the conduct of the campaign it should not be forgotten that the Government is preparing the machinery for the enforcement of the Population Registration Act. This Act is repugnant to all sections of the people and the campaign must pay particular attention to preparing the volunteers and instructing the masses of the people to resist the enforcement of this Act. The campaign on this Act may well take the struggle from stages one and two into stage three of mass action.

13

We cannot fail to recognise that industrial action is second to none, the best and most important weapon in the struggle of the people for the repeal of the unjust laws and that it is inevitable that this method of struggle has to be undertaken, at one time or another, during the course of the struggle. We also note that in the present-day South African conditions, the one-day protests on May 1st and June 26th, 1950, and the one-day protest in the Cape on May 7th, 1951, against the Separate Representation of Voters' Bill, demonstrated the preparedness of the people to undertake this form of struggle with no mean success. We are nevertheless of the opinion that in this next phase of our campaign lawful industrial action should not be resorted to immediately, but that it should be resorted to at a later stage in the struggle. In this new phase of the campaign a sustained form of mass action will be necessary which will gradually embrace larger groups of people, permeate both the urban and the rural areas and make it possible for us to organise, discipline and lead the people in a planned manner. And, therefore, contrary to feelings in some quarters, we are not keen to advocate industrial action as the first

step, but only as a later step in the campaign against unjust laws. It should be noted, however, that our recommendations do not preclude the use of lawful industrial action during the first stage provided that conditions make its use possible on a local, regional, provincial or national scale.

14

It is apparent that the plan of action herein outlined cannot be put into effect without the necessary funds to back it. It is also apparent that no body of men can sit down and work out a budget estimate for such a vast national undertaking. Suffice it to say that a full scale campaign will require thousands of pounds. Conscious of this essential requirement, we recommend with some confidence that if the African National Congress and the South African Indian Congress undertake to launch a "One Million Shilling Drive", it can sustain the campaign. The drive should be conducted under the slogan: "One Million Shillings by the end of March 1952 for Freedom".

National pledge

This Council is strongly of the opinion that an inspired National Pledge should be issued which could be read out at public, factory and group meetings and repeated by all those present. A special day, e.g., April 6th should be set aside so that special meetings are called everywhere, in towns, villages, and hamlets, in factories and locations, and special church services be held on this day, where the National Pledge could be publicly read out. This day or any other day which the Conference of the African National Congress sets aside for the purpose should be called "The National Day of Pledge and Prayer".

(Sd.) J. S. MOROKA
(Chairman)

Y. M. DADOO
Y. CACHALIA
(Representatives of the
South African Indian Congress)

J. B. MARKS
W. M. SISULU
(Representatives of the African National Congress)

Thaba `Nchu
November 8th, 1951

The methods of struggle proposed in the Plan, do they in any way resemble the passive resistance, or rather the methods used in the passive resistance campaign or campaigns conducted by the Indian Congress? - That is so, my Lords.

Would you say that the Defiance Campaign was one involving violence? - No, not at all, my Lords.

Now in the report of the Joint Passive Resistance Council, which I referred to yesterday - I did not read it - on page 7 of the report there is a resolution which refers to volunteers; would you have a look at that, please.

MR. JUSTICE RUMPF:

Page 7 of the report; is it this report?

MR. KATHRADA:

No, my Lords, this is the report of the Joint Passive Resistance Council referred to by me yesterday, a report of the Joint Passive Resistance Council of the Transvaal Indian Congress and the Natal Indian Congress, my Lord.

MR. JUSTICE RUMPF:

Yes, what is the question?

MR. KATHRADA:

Also in the report of the Joint Passive Resistance Council there are references to volunteers, is that correct? - Yes, my Lords, on page 7 of the Joint Council's report.

Now, can you suggest where the idea of volunteers as referred to in these two documents originated? - The idea of volunteers, my Lords, originated from the struggle which the Indian people had in the country, and also from the struggles of the Indian National Congress which were conducted under the leadership of Mahatma Gandhi in India.

Now, referring to the Plan of the Joint Planning Council, was the plan adopted by the Congresses? - Yes, my Lords.

And by the South African Indian Congress? - Yes.

Now I would like to briefly quote from the Presidential Address of Dr. Dadoo

at the Conference of the SAIC in 1952...

The path of survival is the only path before us. It is but natural, it is but right and it is inevitable that we as a people must survive and make progress towards our freedom. It was with this choice before it that the Conference of the African National Congress in all seriousness and with a full understanding of its implications decided to adopt a practical plan of action for the Defiance of Unjust Laws. It is a grave and historic decision which if implemented can and must change the course of South African history. It throws down the gauntlet to the Government's policy of 'back to the Dark Ages'. It breathes new hope to the oppressed peoples of our land.

There are critics who say we must hasten slowly. But to sit quietly and do nothing now would be to allow free play to those evil forces which are bent upon destroying us. It is also being said that to launch out on a struggle now is to put ourselves in danger, but the triumph of truth can never be attained without risking danger.

On the other hand, there are critics who say that the demand for the repeal of certain specified laws does not go far enough, that our demand must be for full and equal democratic rights. The African National Congress, however, has been wise in limiting its demands - for the laws named for repeal are the laws which constitute the greatest threat to our very existence. Moreover, who could deny that if we can succeed in obtaining the repeal of these laws by our struggle, we would not have taken a long step towards the realisation of our objective of full citizenship rights?

The 1952 session of Parliament has already started its work and we urge the Government and Parliament to take steps to answer the call of the African National Congress by repealing by the end of February the unjust laws specified by its resolution. It is fitting that the Government should be reminded of the fact that a government by a minority of the people of a country cannot continue for long to impose its will with impunity on the majority of the people. The sovereign rights of Parliament are derived from the people as a whole and not only from a section. For the Union Parliament to be sovereign it must derive its power from all sections of the South African population, both white and non-white. A Parliament can only sustain itself when it respects the natural

rights of man and conducts itself on the broad principles of democracy. Parliament as it is presently constituted in South Africa violates every principle of the Universal Declaration of Human Rights. As long as these principles are not recognised it will be the primary duty of the people to fight for their recognition.

Mr. Cachalia, does this correctly set out the basis upon which the Indian Congress decided to launch its campaign? - That is so, my Lords.

Now, prior to the actual embarking on the Defiance Campaign, did the African National Congress and the South African Indian Congress take any other steps with the Government in order to attempt to secure the repeal of those laws? - Yes, my Lords, letters were addressed to the Prime Minister requesting to repeal the Acts before the Congresses embarked on the Defiance Campaign.

My Lords, I will have to refer to the correspondence which passed between our organisation and the Government... Annexure G, dated 21st January 1952:²⁸

AFRICAN NATIONAL CONGRESS

Johannesburg
P.O. Box 9207,
21st January 1952

The Prime Minister of the
Union of South Africa
House of Assembly
Cape Town

Sir,

In terms of the resolution adopted by the 39th session of the African National Congress held at Bloemfontein we have been instructed to address you as follows:

The African National Congress was established in 1912 to protect and advance the interests of the African people in all matters affecting them, and to attain their freedom from all discriminatory laws whatsoever. To this end the African

²⁸ In the transcript the date is indicated, in error, as 21st February 1952.

National Congress has, since its establishment, endeavoured by every constitutional method to bring to the notice of the Government the legitimate demands of the African people and repeatedly pressed, in particular, their inherent right to be directly represented in Parliament, Provincial and Municipal Councils and in all Councils of State.

This attitude was a demonstration not only of the willingness and readiness of the African people to cooperate with the Government but also evidence of their sincere desire for peace, harmony and friendship amongst all sections of our population. As is well-known the Government through its repressive policy of trusteeship, segregation and apartheid and through legislation that continues to insult and degrade the African people by depriving them of fundamental human rights enjoyed in all democratic communities, have categorically rejected our offer of cooperation. The consequence has been the gradual worsening of the social, economic and political position of the African people and a rising tide of racial bitterness and tension. The position has been aggravated in recent times by the Pass Laws, Stock Limitation, the Suppression of Communism Act of 1950, the Group Areas Act of 1950, the Bantu Authorities Act of 1951 and the Voters` Act of 1951.

The cumulative effect of this legislation is to crush the National Organisations of the oppressed people; to destroy the economic position of the people and to create a reservoir of cheap labour for the farms and the gold mines; to prevent the unity and development of the African people towards full nationhood and to humiliate them in a host of other manners.

The African National Congress as the National Organisation of the African people cannot remain quiet on an issue that is a matter of life and death to the people; to do so would be a betrayal of the trust and confidence placed upon it by the African people.

At the recent Annual Conference of the African National Congress held in Bloemfontein from the 15th to 17th December 1951, the whole policy of the Government was reviewed and after serious and careful consideration of the matter, Conference unanimously resolved to call upon your Government, as we hereby do, to repeal the aforementioned Acts by not later than the 29th day of February 1952, failing which the African National Congress will hold protest

meetings and demonstrations on the 6th day of April 1952, as a prelude to the implementation of the plan for the defiance of unjust laws.

In the light of the conference resolution we also considered the statement made by the Prime Minister at Ohristad on the 5th instant in which he appealed to all sections of our population, irrespective of colour and creed to participate fully in the forthcoming Jan Van Riebeeck celebrations. It is our considered opinion that the African people cannot participate in any shape or form in such celebrations, unless the aforementioned Acts which constitute an insult and humiliation to them are removed from the Statute Book.

We firmly believe that the freedom of the African people, the elimination of the exploitation of man by man and the restitution of democracy, liberty and harmony in South Africa are such vital and fundamental matters that the Government and the public must know that we are fully resolved to achieve them in our lifetime.

The struggle which our people are about to begin is not directed against any race or national group but against the unjust laws which keep in perpetual subjection and misery vast sections of the population. In this connexion, it is a source of supreme satisfaction to us to know we have the full support and sympathy of all enlightened and honest men and women, black and white in our country and across the seas and that the present tension and crises have been brought about not by the African leaders but by the Government themselves.

We are instructed to point out that we have taken this decision in full appreciation of the consequences it entails and we must emphasise that whatever reaction is provoked from certain circles in this country, posterity will judge that this action we are about to begin was in the interest of all in our country, and will inspire our people for long ages to come.

We decide to place on record that for our part, we have endeavoured over the last forty years to bring about conditions for genuine progress and true democracy.

(Signed) Dr. J.S. Moroka
President-General
W. M. Sisulu
Secretary-General

To your knowledge, Mr. Cachalia, is that the text of a letter sent by the African National Congress to the Prime Minister? - Yes, my Lords.

When was the Defiance Campaign actually embarked upon? - On the 26th June, 1952, my Lords.

Now you have already told the Court that you were appointed Deputy National Volunteer-in-Chief? - Yes, my Lords.

I would like to obtain from you further information on your appointment in that capacity, and also certain information in regard to volunteers. As Deputy Volunteer-in-Chief, was it part of your function to assist in organising the volunteers and in training volunteers? - That is so, my Lords.

I understand that you were concerned particularly with the Indian volunteers? - Yes, that is so.

You had something to do with selecting volunteers? - Quite correct.

In making the selection of volunteers, was any investigation made into the background of the persons concerned? - Yes.

Who made these investigations? - Well, anyone who would be in charge, and I personally made a lot of investigation.

How did you make this investigation? - Well, the investigations were based on his background, his religious beliefs and whether he could convince one that he would abide by the non-violent nature of the struggle.

MR. JUSTICE BEKKER:

What was the purpose, what was it you were afraid of, or what did you try to avoid? - My Lords, we wanted to ensure that he would not indulge in violence. Now in going into the background we tried to find out whether in his life he was a person...

You wanted a peaceful individual as a volunteer rather than one who might flare up, is that the point? - That is the point, my Lord.

MR. KATHRADA:

Were instructions given to volunteers in regard to their conduct in the campaign? - That is correct.

What sort of instructions were given? - The instructions were all along that they should be peaceful, they should be obedient, they should take orders from the Board or from the organisation and carry them out in spite of any humiliations or difficulties, and for which orders a code was laid down.

MR. JUSTICE BEKKER:

Do you know whether anybody did that on behalf of the African National Congress movement? - Yes, my Lord.

Who was it who did that? - In Johannesburg the Volunteer-in-Chief of the Transvaal, Mr. Seperepare, that was his name, my Lord.

MR. KATHRADA:

Did the Indian Congress regard the Defiance Campaign as a success or a failure? - We regarded the campaign as a success, my Lords.

In view of the fact that the campaign did not lead to the repeal of the laws in question, in what sense was it regarded as a success? Did the participants indulge in acts of violence? - No, no, not at all, my Lords. The success was that a substantial number of people took part in defying the laws - more than 8,000 if I remember correctly - well, this was the future support of carrying on the struggle eventually. These people would carry out the Congress policy, more than 8,000 strong, on a non-violent basis. Also, my Lords, it made a great impression on the other sections, particularly the European section of the population as well.

MR. JUSTICE BEKKER:

In what sense do you suggest it made an impression on the European population? - My Lord, when they saw this struggle going on, there were people who came and wanted to defy in collaboration with us; they also wanted to undergo the same suffering as we were undergoing, by going to gaol. There were people who set up committees for that purpose, to support the movement, to support the defiance and so on, and this sort of support generally came from the Europeans.

MR. KATHRADA:

On your own knowledge do you know whether contributions were received from Europeans for the welfare of dependents? - Yes, my Lords.

At the time of the Defiance Campaign was any organisation formed among the Europeans? - Yes, my Lords, at the end of 1952 a number of Europeans said that they would like to assist us and they were prepared to undergo the same suffering as we were suffering and defy the laws; there were people like Mr. Patrick Duncan, Freda Troup, and quite a number of people approached us, and at that stage we felt that if the Europeans actually wanted to take part in the struggle then they should do so through some organisation, some European organisation. As a result of that the African National Congress and the South African Indian Congress sent invitations to quite a number of Europeans in Johannesburg to attend a meeting where we had a representative of the African National Congress, a representative of the South African Indian Congress, and our position was explained. We also explained that if they felt like supporting this movement and taking an active part in the movement, then it would be desirable for them to form an organisation and work through that organisation in alliance with the South African Indian Congress and the African National Congress. A meeting of that nature was held and quite a number of people attended that meeting. I was also present. As a result of that meeting an organisation was formed which was afterwards named the Congress of Democrats.

Did the Defiance Campaign have any international repercussions? - Yes.

What were they? - Well, after conducting the struggle for a while countries all over the world, in many places, approved the struggle; they sympathised with the cause and eventually the question of apartheid was taken up by the United Nations.

After the Defiance Campaign what was the attitude of the Indian Congress on the question of passive resistance and the method of struggle? - The attitude of the Indian Congress insofar as the defiance was concerned, and the passive resistance movement we were conducting, our attitude was that the Defiance of Unjust Laws campaign was carried out according to the non-violent basis.

Is the position then that after the Defiance Campaign the Indian Congress maintained the policy of non-violence? - Oh, certainly, yes. We were more convinced by then that the Indian Congress, together with the African National Congress, could carry out its campaign,

could carry out our non-violent struggle. We were then more convinced than when we started.

MR. JUSTICE RUMPF:

About what? - We were more convinced that in the future, the Congresses, and more particularly the African people, would be capable of carrying out the struggle non-violently; after the experiment of defiance.

MR. KATHRADA:

I now want to refer you to Exhibit E. 28, which is a document entitled "Self-discipline for Volunteers of the Congress of the People", purported to be a speech by Dr. G. M. Naicker, President of the Natal Indian Congress, delivered at the first Natal Conference of the Congress of the People in Durban on the 5th September, 1954. My Lords, I believe this document was read in as C.55, at page 2043 of the record. Have you read this document, Mr. Cachalia? - No.

MR. JUSTICE RUMPF:

Well, do you know that document? - I have seen this document, my Lord.

MR. KATHRADA:

Did you say you have read this document before? - Yes, I once read this document...

Is it consistent with the policy of non-violence of the Congress to which you have referred? - Yes, my Lords.

Is it consistent or inconsistent with the teachings of Mahatma Gandhi? - It is certainly consistent with the teachings of Mahatma Gandhi.

Does this document also reflect the entire policy of the Congress, not only the non-violent aspect of it? - No, my Lords. I see this document is divided into two parts. The first part on pages 1 and 2, one could say that the first part is adopted by other Congresses as a policy in pursuing our method of struggle. But insofar as the second part is concerned, my Lords, which is on pages 3, 4 and 5, this deals with - very vaguely of course - the constructive programme as Mahatma Gandhi put into effect in India. Thereby he accepted non-violence as a creed, and through this programme he eventually

visualised setting up in India a state which would be a social classless state based on non-violence. At no stage have we accepted that; the Congresses have not accepted the policy of non-violence as a creed; therefore the second part I think does not operate as far as the Congresses were concerned.

Is it your contention then that this document of Dr. Naicker's - the latter part of it - puts forward a creed and way of life which goes further than Congress policy? - Quite so, my Lords.

Do you know whether this document was circulated? - I wouldn't know how it was circulated...

Mr. Cachalia, it has been suggested that the Congress movement regarded the end towards which it was working as far more important than the methods employed in the struggle for the achievement of those aims, and that consequently it was prepared to resort to any methods including violent ones, in order to attain these ends? - No...

Now, would you please tell the Court whether or not you personally hold the view that the end is all important, and that consequently all methods of struggle including violent ones are permissible? - No, my Lords. As far as the policy of the Congresses is concerned we believe that the method which we employ is more important than the aim itself... we have specifically accepted and abided by the policy of non-violence, so that whatever we achieve through negotiation - altering the laws through Parliament, through the Government and so on - will be based on the democratic system. Violence would certainly destroy all that and that is not permissible at all as far as our organisation is concerned.

Is this the view in accordance with the teachings of Mahatma Gandhi? - That is so, my Lords...

Now I take it, Mr. Cachalia, that you do not have detailed knowledge of the activities and resolutions taken by the Congresses during the period after your banning in 1954. Is that correct? - That is so.

I presume, however, that you have been in personal contact with members of the Congress since your banning? - Yes. We meet socially and otherwise...

And have you attempted to keep yourself informed about Congress policy? - Yes.

MR. TRENGOVE:²⁹

My Lords, just in case the witness may be asked evidence as to what he was informed about Congress policy, we will object to that.

MR. JUSTICE RUMPF:

Yes.

MR. KATHRADA:

My Lords, I merely wanted to put one question to him; that is, from the information that you have gathered would you say that Congress policy has in any way changed since your banning?

MR. JUSTICE RUMPF:

No, he can't say that...

MR. KATHRADA:

I won't pursue the point, my Lord.

Now before you were banned, Mr. Cachalia, apart from the general political struggle of the Indian people, did the Congress concern itself with matters affecting the immediate welfare of the Indian people? - Yes.

Could you mention any specific matters with which it concerned itself? - Well, for instance it concerned itself with the education question, the question of immigration was brought up from time to time - health, social welfare matters, housing and so forth...

Take education for example, could you give us some idea as to what the Indian Congress did in the field of education? - Yes; as far as education was concerned, representations were made from time to time to the Government; also a substantial sum of money was collected so that schools could be built up; for instance, in Natal there are schools which are subsidised by the Government, and the other funds provided by the schools. In some cases we have put up independent schools as well. Congress did all those sorts of things in promoting schools and education.

Now you have already given evidence on the general attitude of the Congress on the Group Areas Act. Is it correct that since the passing

²⁹ The prosecutor

of this Act in 1950 the Indian Congress devoted a considerable amount of time to this Act and its application to the people? - Oh, yes, naturally. It is a daily occurrence, when people get into difficulties, these matters are handled by the Congress; also the Group Areas Board with which the Congress deals.

Apart from the general political objection of the Indian Congress to the Act, are there any specific features of the Act that the Indian Congress objects to? - Yes. In the administration of the Act, for instance, immediately the Act came into operation the Minister started defining all the properties which were occupied by Indians in the Union. As a result of that our position - take the Transvaal from 1939 for instance and Natal from 1943, we were subjected to more hardships and difficulties for the simple reason that we could not extend our premises and if we did that there were already difficulties - we were already finding it difficult at that time to extend as the population grew, but since our properties were defined we could not extend and the congestion became so acute that our people have to live in very unhealthy conditions in places, and the people are facing real hardship...

With regard to the application of the Act in respect of the declaration of group areas, did the Indian Congress express its fears at the outset? - Yes.

And what were the fears of the Indian community in this regard? - That they would be uprooted from their established positions - this would affect their livelihood and so on, it would affect their whole lives.

Have group areas in fact been declared in recent years? - Yes.

Have you a personal knowledge of the effect of this proclamation in some areas? - Yes, particularly in the Transvaal. There are group areas declared in Carolin for instance, Ermelo, in the Western Transvaal - for instance in Ventersdorp, Rustenburg, in Northern Transvaal, Pietersburg, again in Pretoria, also in the western part of Johannesburg.

MR. JUSTICE KENNEDY:

Have they been put into effect? - There are time limits. Practically all these group areas were against the Indians and the communities will definitely be uprooted where they have been declared as I have mentioned. The time limit is set to each group area; evacuation will take place at a certain time. With the exception of Johannesburg, in

other places the time has not expired yet. In Johannesburg the time has definitely expired.

MR. KATHRADA:

Now, on examination of these proclamations that have already been made, can you say whether Congress fears were justified? - Yes.

Can you give us a few examples? - The areas I have mentioned - in all these areas the Indian communities who have established themselves at the end of the last century in most cases, or at the beginning of this century - they will all be uprooted from their positions. It is a question of their livelihood - what they will do? What people will do in Rustenburg for instance, or what they will do in Ermelo, when the group areas really comes into operation and people will have to move. It is a question of life and death as far as they are concerned...

What was the hope of the South African Indian Congress with regard to the Europeans? - Well, my Lords, in our struggle we hoped that by this method of non-violent struggle we would be able to win over their sympathy and in fact during and after the Defiance Campaign, an organisation like the South African Congress of Democrats was set up - which organisation was working in alliance with the Congress movement. Apart from that there was the South African Labour Party which was very sympathetic towards the non-European cause and in fact some of the leaders are supporting the movement in some respects. Again, the Liberal Party was formed and they are coming very close to the non-Europeans in their demands. Recently I see that the Progressive Party was formed, and they too are coming much nearer towards our cause and they are much more sympathetic to the non-Europeans. And I have formed the view that as a result of our passive resistance struggle we have achieved all that, and I am certain that if we carry on - and if the non-Europeans will have faith in non-violence - eventually we will be able to get the majority of the European population of this country on our side.

Has your organisation always gone out of its way to get European support, to win European support? - Oh, most certainly.

You mentioned the Congress of Democrats; were you present at the inaugural meeting of the Congress of Democrats? - Yes. I think I opened the conference.

Were representatives of the African National Congress there? - Yes, I think so.

Were you subsequently elected to the Executive Committee of the Congress of Democrats? - My Lords, the Conference went on for two days, Saturday and Sunday. I was there on the Saturday. I left, I think, in the afternoon, and eventually I understood that I was elected as an executive member of that organisation. When it became known it was discussed in our organisation and eventually I tendered my resignation. As a member of the Executive, I never participated in any of the deliberations of the Executive; I don't remember participating at all...

MR. JUSTICE KENNEDY:

Was there any reason why you resigned from the South African Congress of Democrats Executive Committee? I have been under the impression - I may be wrong - that only whites were elected to their membership? - Yes, my Lord, that was discussed in our Congress and it was decided that this organisation was meant for the whites only and therefore I should resign; consequently, I did resign.

MR. KATHRADA:

I think you mentioned that the Congress of Democrats was formed at the initiative of the African National Congress and the South African Indian Congress; is that correct? - Yes, my Lords...

To your knowledge, did the Congress of Democrats attempt to make the Indian Congress class conscious? - No. In fact, the Congress of Democrats supported us, more particularly in our fight in group areas where we were trying to safeguard our economic and trading rights, and if I understand that class struggle means elimination of those sort of things - those economic interests - then their support would naturally mean that they were actually supporting us in our economic interests. That question I don't think ever came up.

Was the composition of the Indian Congress derived from any one particular class? - The Indian Congress?

Yes. - The Indian Congress is composed of all sections of the Indian community in that there are labouring classes, there are professionals, there are merchants, businessmen - all take part in this struggle. And, my Lords, that has been accepted from the very inception when Gandhi was here, so that this struggle should not become a movement for any one particular class, and it was always our duty to see that all sections of the population, all sections of the Indian community, are represented on the Congress and in the

movement. Similarly, when the African National Congress, when we allied with them, we saw to it that all sections should be represented. Therefore when we got the support of the European population in the movement we were very happy indeed to see that they, too, came forward and worked in cooperation with the non-Europeans; so it would not become only a non-European campaign.

So to your knowledge would you say that the composition of the other Congresses as well was not restricted to any one particular class? - No.

Now, coming to the newspaper *New Age*, and the newspapers preceding *New Age*, are you aware that there was a newspaper called *Advance*? - Yes.

Was there any organisational connection between these newspapers and the Congress movement? - No...

What, to your knowledge, was the general attitude of the South African Indian Congress towards these papers? - Well, we supported the newspapers from the point of view that they had a large circulation, and in which news of our Congress was correctly set out. We had two other Indian papers, like *Indian Views* and *Indian Opinion* which were circulated particularly amongst the Indian communities, and therefore any of the Indian Congress news may not go outside that and other communities may not be well informed about our views. Therefore we supported the *New Age* because it gave quite a lot of news of the Indian Congress, more particularly on the group areas.

When you say *New Age* do you also refer to the papers that preceded it? - Yes, *Advance*...

Did the South African Indian Congress agree, or was it ever called upon to agree with the attitude of these papers in connexion with such matters as Socialism or international affairs? - Well, we were not called upon to associate ourselves with or support any opinions that were expressed in these papers, as far as Socialism or any other ideas which may have appeared in the papers were concerned. That was not part of our struggle at all, so we were not concerned with it.

Do you know a magazine called *Fighting Talk*? - Yes.

Would you say the same thing about *Fighting Talk*? - Quite, yes.

Now, Molvi Cachalia, during January of 1955, did you leave South

Africa? - Yes.

What was your destination? - India and Bandung.

Were you accompanied by anyone? - Yes, Mr. Kotane³⁰ was with me when I left.

Did any other person join you and Mr. Kotane during your journey to Bandung? - Yes, Mr. Nagdee joined us in London, and he also accompanied us to India and to Bandung.

Did you go to England first? - Yes.

Who is Nagdee? - He is my neighbour; he stays next to my house, and he is an Indian.

Is he a member of the Indian Congress? - He is not an active member of the Indian Congress but under the Constitution he is a member; but he does not take any leading part.

Were you sent by anybody to Bandung?... - The position was this. In India, particularly in Bombay State - from there the majority of the inhabitants of the Transvaal originated, or their ancestors may have come from that state - there was a Bill before the Assembly in connexion with the absentee landlords - that is, the agricultural landlords, and most of our people who are living here in this country held some sort of estate in India. As a result of that there was talk that these properties would be taken over for the benefit of the people who stay in that village, and the Government wanted to do away with absentee landlords. And as a result of that there was discussion amongst a number of our people that somebody should go over and make some representation so that we could get some respite, and eventually dispose of our properties. As a result of that quite a number of people suggested to me that I should go over, and that while that was under discussion, my brother³¹ told me that it would be a wise thing that as this Bandung Conference³² is about to be held I should go there too. That was afterwards discussed with a number of leading Indian people and I decided that I would go there as well. While this matter was under discussion I was told by my brother that it was understood that Mr. Kotane was also going and it would be a good

³⁰ Mr. Moses Kotane, member of the National Executive Committee of the African National Congress

³¹ Mr. Yusuf Cachalia, Secretary of the South African Indian Congress for several years

³² Asian-African Conference, Bandung, Indonesia, April 18-24, 1955

thing if both of us went together; that discussion we had in regard to going over.

Now, of your own knowledge, do you know by whom Mr. Kotane was sent to Bandung? - Well, I learnt from Mr. Kotane that he was going on behalf of the African people.

Which countries sponsored the Bandung Conference? - The Bandung Conference was sponsored by India, Pakistan, Burma, Ceylon and Indonesia - they are what is called the Colombo Powers; they sponsored the Conference.

From which countries did the delegates to this Conference come? - Well, the invitations were sent, it appears, to the states of Africa and Asia.

Where is Bandung by the way? - Bandung is in Indonesia.

By whom was the Conference opened? - This conference was opened by the President of Indonesia, Dr. Sukarno.

What would you say were the aims and objects of the Bandung Conference? - The aims and objects of the Bandung Conference were to promote peace, also to discuss the question of colonialism and imperialism, and also to bring about better relations between the countries of Asia and Africa.

What was the interest of the South African Indian community in this conference? - My Lords, the Indian community was not invited to the Bandung Conference as delegates, because the delegates were only from the independent states. But as I mentioned before from time to time it was the policy of the Indian Congress to educate and get support outside South Africa in our struggle, and from that point of view the Indian people were interested in that conference.

When did you return to South Africa? - The following year, in April.

Before returning to South Africa did you visit any other countries? - On my way back?

Yes. - Yes, from Bandung I went to Thailand, that is the route I took, I stayed there for about three days, and then I had to go to Singapore, and from Singapore I went back to India where I stayed for quite a long time.

On your return to South Africa did you report to anybody on your mission to Bandung? - Well, I spoke and reported to some of the people with whom I had discussions before I left.

Did you visit any Communist countries? - No.

If you had had occasion to visit Communist countries, would you have done so? - Well, I wouldn't go out of my way, but if I would have had an occasion I would have gone to see things there as well.

While you were a member of the Indian Congress did various Congress leaders go abroad? - Yes.

Can you name some of them? - Yes, Mr. A. I. Meer went to America and England; Mr. Ashwin Choudhuri, one of the South African Indian Congress leaders, went over; similarly Mr. Sorabji Rustomjee went over to England, Ireland, America, the United Nations, India; Mr. H. A. Naidoo went over; Mr. M.D. Naidoo went to America and India; Dr. Dadoo went to India on two occasions and he went to England too; Dr. G. M. Naicker went to India; of course they went to other places too - Nairobi and those places. There may have been others.

Did any of the Indian leaders visit Communist countries to your knowledge? - I think you yourself went to Hungary or somewhere...

Did the Indian Congress have any objection to its leaders visiting any Communist country? - No, not at all.

Just one last question about Bandung. Do you know if the following countries were invited to the Bandung Conference: Formosa, Israel and South Africa? - No, I don't think so. I don't know about Formosa, but I know about South Africa and I don't think Israel was invited.

I have no further questions, my Lords...

MR. CACHALIA:

My Lords, at this stage can I have the assistance of an interpreter?... I am finding some difficulty in expressing myself, my Lord.

MR. JUSTICE RUMPF:

So far you have expressed yourself very well in English. We will continue and see if it is necessary; if you find it really necessary we

will see about it.

MR. KATHRADA:

My Lords, the witness told me that so far he managed because he was prepared for some of the questions, but he did express the fear that he would not be able to confidently answer questions in English under cross-examination.

M. JUSTICE RUMPF:

Well, we will see how he goes. Just proceed, Mr. Trengove.

CROSS-EXAMINATION BY MR. TRENGOVE:

Molvi Cachalia, after qualifying as a priest how long did you actually fulfil your mission as a priest, and where? - My Lords, after qualifying as a Molvi I would say I did not go in for preaching or for the priesthood at all, and I may say that it is a common thing amongst the Muslims that there is no question of priesthood; it is not necessary, after qualifying, to go into preaching and so forth.

I don't say it is necessary, but your career has really been that of a politician and a businessman. Is that correct? - That is right.

And in what business are you? - I am carrying on at present a mail order business; I carry on a business called "Central Distributing Agency" - it is a mail order business.

Throughout the country? - Mostly confined to Johannesburg.

And these letters that are sent to you when people order goods from you, do you have them translated into Undue before you reply to them? - No, we have agents who bring in the orders.

I see, and you conduct your business in what language? - In English...

Mr. Cachalia, you have made a very detailed study of the Group Areas Act and all its ramifications, haven't you? - I don't know what very detailed means, but these are the problems which are faced by members of our people and we discuss them.

Yes and you have studied the Act, all the amendments? - Well, we have to go

to lawyers and we do discuss with the lawyers, and try to understand from the Act as well.

Have you studied the Act? - Yes.

The English or the Afrikaans version? - I don't know Afrikaans, but English I do read.

And you have read the judgements of the Court? - Yes.

And you are known amongst the Indian community as one of the experts on the Group Areas Act, are you not? - No, I don't agree with that at all; I cannot be an expert.

And the Indian school that you attended, what languages did you learn in there? - Undue, Gujarati and English.

And English? - Yes.

Now, Mr. Cachalia, you say that you were an Executive member of the South African Indian Congress for a number of years? - Yes.

Apart from that did you belong to any political organisations? - The Transvaal Indian Congress.

Yes, any others? - I don't remember offhand.

What about the Peace Council? - Well, that is not a political organisation... It is a movement, a peace movement.

You were one of the people who started the Transvaal Peace Council in 1950, was it not? - Yes...

And in 1953 you participated in the establishment of the South African Peace Council? - Yes...

And you were elected at the first National Conference as one of the Vice Presidents of the Peace Council? - Yes, it is possible.

What do you mean it is possible; do you know that or don't you know it? - I don't remember unless I go into it, but it's quite possible...

Have you a bad memory, Mr. Cachalia?...

Mr. Cachalia, were you not one of the Committee that really convened the first National Peace Conference? - I may have been on the Committee as well.

But were you not the chairman of that Committee, Mr. Cachalia? - No, I don't think so. I did not take a very active part. I was the secretary of the Transvaal Peace Council. I think I must be reminded, my Lords... but I was in the peace movement, that is quite correct...

Now, Mr. Cachalia, you say the Peace Council is not a political organisation? - Not in the sense that we conduct our political struggles; it is confined to the peace of the world.

The peace of the world? - Yes.

And do you know what the Peace Council says, under what circumstances there will be peace in the world? - Yes.

Do you know that they support the liberatory struggles in the various countries, because with liberation peace will be achieved? - Yes, because these are the causes of friction; colonialism was the cause of the wars throughout the years, and peace movement is essentially interested in avoiding any bloodshed and war in the world.

So that in that sense the Peace Council supported liberatory struggles in various countries? - Yes, to bring about peace and avoid wars.

Now, Mr. Cachalia, you have spoken about Dr. Dadoo. You said he was a Communist, is that correct? - Yes.

And he became the President of the South African Indian Congress in 1952? - Correct.

Who was President prior to that? - Mr. Ahmed Ismail.

Was he a Communist too? - No.

What happened to him? - He is dead now.

No, in 1952. - In 1952 he was President of the South African Indian Congress.

And was Dr. Dadoo elected in his place? - Yes, the Constitution of the South African Indian Congress works in this manner, that the office rotates in different provinces. When Mr. Ismail was in Cape Town, the members from Cape Town were the officers of the Indian Congress; the office was there in those years. When it came to the Transvaal, when the turn of the Transvaal came, then the officials were elected in the Transvaal; then when it rotated to Natal, the officials were elected in Natal...

Now, Mr. Cachalia, the Indian Congress, together with the other Congress movements - the African National Congress, the South African Indian Congress, the South African Congress of Democrats, the South African Coloured People's Organisation, and the South African Congress of Trade Unions - they were all in a liberatory struggle; do you know that? - Yes.

And they all worked together? - Yes...

Do you know of any divergence in policy between the various Indian Congresses in regard to the aims and objects of the liberatory struggle? - No, our objective is only one and that is laid down in the policy - that we wanted to achieve our rights, and for that purpose we pursued our struggle.

Now, do you know of any divergence as to the objects, whatever they may be, between them - the Natal Indian Congress, the Transvaal Indian Congress, the South African Indian Congress and the various youth organisations? - As far as the Transvaal Indian Youth Congress is concerned they are not part of the Indian Congress as such; it is an independent organisation. As far as the provincial organisations are concerned, which are affiliated to the South African Indian Congress, they have their own organisations - these organisations are independent, although they are affiliated to the South African Indian Congress... One would put it on a federal basis...

We know they are organised on a federal basis, do you know whether there was any divergence in the aims and objects that they pursued in the liberatory struggle? - As far as the South African Indian Congress was concerned, no; they all had the same objective.

Is there any difference as to the methods to be employed in achieving these objects? - No, it is the same object we have.

And the same methods? - Yes.

Now, Mr. Cachalia, apart from Dr. Dadoo, do you know of other Communists in the Indian Congress movement? - In the Transvaal?

Yes. - Yes, there is one Mr. Thandray, and Mr. Kathrada was a member of the Communist Party I suppose.

What do you mean you suppose? - Well, I didn't see him in the Communist Party, I really don't know...

Did he have that reputation? - I heard that he was a member of the Communist Party, but apart from that I don't know. And I don't think any others, if there are others, I don't know.

And in Natal? - Yes, in Natal I think Dawood Seedat was a member of the Party; I think Singh was a member of the Party; one of the Naickers was a member of the Party - M. P. Naicker, I think.

Now see this exhibit which you handed in yesterday, Z.15, this letter to the Government, where you give Dr. Donges` letter and the reply of the Joint Council to that. Dr. Donges referred to Communists in your organisation, and I see that the letter to Dr. Malan is signed by D. Singh, General Secretary of the Natal Indian Congress, 1948 - now that would be Singh the Communist? - May be, yes, I think he was a Communist Party member.

That is the one you said a moment ago was a Communist? - That's right.

And he was General Secretary of the Natal Indian Congress? - Yes.

In 1948? - Yes.

Do you know whether Faried Adams was a Communist? - I don't know, I don't think he was a Communist Party member. I have never known about that.

What about Billy Nair from Natal, do you know him? - I don't know him very well.

Paul Joseph, do you know him? - Yes.

What position did he occupy in the Congress movement? - He wasn't any official of the Transvaal Indian Congress, I don't think so.

Do you know if he was a Communist? - I don't think he was a Communist.

Now, Dr. Dadoo who became your President in 1952, do you know his political career before that time? - My Lords, Dr. Dadoo, I know him from childhood. We were at school together and we were classmates.

He was a very prominent Communist, was he not? - He may have been but as far as our Congress activities were concerned he accepted our line, that is the line of passive resistance, in the movement.

I am not asking you that for the moment. He was a prominent Communist, was he not? - He was a member of the Communist Party, yes.

And do you know he was one of the people who was involved in 1946 miners` strike? - Well, I was not here at that time. I was in India when the strike actually took place.

I see. While on that point, you spent quite some time overseas, not so, from

time to time? - India, yes.

Now, you were there in 1946? - Yes.

For how long? - I think three months.

And after that? - I was again there in India in 1950.

For how long? - For about one year...

And after that? - In 1955.

Was that when you went to Bandung? - Yes.

Then you stayed there? - For about a year.

You've given some evidence on the *satyagraha* and Gandhi's philosophy. Have you made a study of that, Mr. Cachalia? - Yes, the study of the movement which went on here and the way the struggle went on in India.

Have you read any books? - Yes, I've read some of Gandhi's books, but some years ago when I was studying, just before 1930...

Now give me the names of the books you read. - I read *My Experiments with Truth* and *Satyagraha in South Africa*, and some of the books during the struggle of 1940...

What is the name of that book? - I don't remember but that was based on his articles and so on in 1940 during the war.

You know what Gandhi says about the Communists... not about Communism but about Communists? - I don't know.

You wouldn't know? - No.

Would you accept that Gandhi said the following about Communists: "The Communists seem to have made trouble-shooting their profession; I have friends among them, some of them are like sons to me, but it seems they do not make any distinction between fair and foul, truth and falsehood. They deny the charge. But their reported acts seem to sustain it." Would you accept that Gandhi said that? - Yes, but I don't know on what occasion this was said, and for what purpose.

He said it in reply to a question, "How can we counteract the activities of Communists, who are openly opposing Congress?" You know Gandhi's books; people put questions to him and then he replies to them? - Yes.

Now this question was asked about the Communists and he said: Communists are people who don't distinguish between fair and foul, and truth and falsehood. - There must be some question on what basis Mahatma came to that conclusion. That is what I want to know.

MR. JUSTICE RUMPF:

What book did you refer to?

MR. TRENGOVE:

Towards Non-violent Socialism, by M.K. Gandhi, page 159, my Lord...

Whether it is in this book or not, would you accept that that would be the attitude of Gandhi towards Communists? - No, because there may have been some specific question on which this sort of thing might have arisen. Otherwise, what I know is that he worked in the Indian National Congress with the Communists who were also members of the All India Congress Committee and I know that Dr. Ashraf³³ and such people were members of the Indian National Congress who were fighting for the liberation of India, and they were fighting side by side through the same organisation.

Could a Communist be a *satyagrahi* in the sense that Gandhi understood it? - You see, when they work through an organisation, and if that organisation accepts certain principles, or certain methods of struggle, and as long as the members - he may be a Communist or whatever he may be - as long as he abides by the principles in struggling, and in pursuing the movement, then we accept that position, and similarly, in India his policy was one of non-violence and through that the Communists worked and they were accepted as such.

Mr. Cachalia, that was not my question to you. My question to you was whether a Communist could be a *satyagrahi* in the sense that Gandhi used that expression? - That is how the Communists who work in the Indian National Congress worked, and the Congress accepted the position.

You are not replying to the question, Mr. Cachalia. Could a Communist be a *satyagrahi* in the sense that Gandhi understood that term? - My Lords, the Communist when he accepts the policy and works on that policy for whatever period he is a *satyagrahi*.

Mr. Cachalia, the basis of the doctrine of *satyagraha* is spiritual force and a belief in God, is it not? - Quite, no, not necessarily a belief in God, because in Hindu philosophy for instance there are people who don't believe in God and yet they are *satyagrahis*.

³³ Dr. K. M. Ashraf

Mr. Cachalia, Gandhi said that they could never really become true *satyagrahis* unless they accepted spiritual forces as the leading motive of their lives? - That is correct.

Yes, and the Communist believes in materialism? - Yes.

And they are against religion, is not that correct? - I agree, my Lords, but amongst the Hindus too there are those who don't believe in God and yet they are *satyagrahis* if they accept the method.

I want to put it to you, Mr. Cachalia, that from Gandhi's point of view, either you accepted *satyagraha* as a creed or? - No, not as a creed.

You were not really a *satyagrahi*? - No, my Lords, I can't accept that position because I want to demonstrate a little...

MR. JUSTICE RUMPF:

The question is whether from Gandhi's point of view, a *satyagrahi* is the person who accepts Gandhi's creed? - My Lords, I will give some examples. For instance Pandit Nehru, the present Prime Minister of India, he is the political heir of Mahatma Gandhi. Pandit Nehru as far as I know, does not believe in God and yet he worked on the basis of non-violence as a policy, out and out; again there were other people in the Congress - for instance Maulana Azad, who was President of the Indian National Congress for a very long time during the war years; he did not agree with Mahatma Gandhi on the creed of *satyagraha* but he accepted the policy for achieving independence of India through non-violence, or through *satyagraha* - he was working with Mahatma Gandhi on the top rank. Again, there was Vallabhbhai Patel who was very near and dear to Mahatma Gandhi and yet he did not believe in *satyagraha* as a creed, but he believed in *satyagraha* as a weapon to achieve their independence. And of the people who were on the Working Committee, on the top, of the Indian National Congress were two persons whom I know, like the President of the Indian Republic, Dr. Rajendra Prasad, who believed in *satyagraha* as a creed, as Mahatma Gandhi believed, and there was another gentleman, Abdul Ghaffar Khan who was commonly known as Gandhi of the Frontier Province, and he also believed in *satyagraha* as a creed. Otherwise the majority of the Working Committee members, and the All India Congress Committee members, did not believe in *satyagraha* as a creed.

MR. TRENGOVE:

Now, you know this autobiography Nehru? - Yes.

Towards Freedom? - Yes.

You know this book? - Yes.

It is the autobiography of Nehru. - Yes, I've read that some years ago...

Now, page 82, referring to the creed of Gandhi, he says: "We were moved by these arguments, but for us and for the National Congress as a whole the non-violent method was not, and could not be, a religion or an unchallengeable creed or dogma. It could only be a policy and a method promising certain results, and by those results it would have to be finally judged." - Yes, that is what I was trying to convey.

So that it was just one - this non-violence as the mass of the Indians accepted it, not being a creed, to them it was just a tactic - a political method to achieve a certain end, is that correct? - As far as the policy of the Indian National Congress was concerned, yes.

And the South African Indian Congress in South Africa, the Congress movement as a whole, to them this non-violence and passive resistance was merely a political tactic? - No, my Lords, as the Indian National Congress believed in the non-violent struggle as a method, and through which they achieved their independence eventually in 1947, similarly we have adopted that tactic of *satyagraha* in our organisation - that is, the South African Indian Congress.

You call it *satyagraha* but it is just a political method to achieve a certain end, as far as your organisation is concerned? - It is more than that. As the Indian National Congress has accepted the method, similarly we have also accepted that as a method here, but then there are people who may not believe in the life as a creed. There may be members in the Indian Congress here who may believe in *satyagraha* as a creed; for instance, Mr. Nana Sita who was President of the Transvaal Indian Congress after Dr. Dadoo resigned, he believed in *satyagraha* as a creed. He tried to put into effect non-violence through all aspects of life.

But to the organisation, your organisation, the Indian Congress, it was merely a method? - Yes, a method just as it was adopted by the Indian National Congress in India.

And I want to put it to you, Mr. Cachalia, that there is a very big difference between non-violence as a method and *satyagraha* as a creed preached and propagated by Gandhi? - My Lords, I think I will still have to explain the position. In India Mahatma Gandhi believed in *satyagraha* as a creed, whereas the Indian National Congress and the vast majority of the people in the National Congress who adopted *satyagraha* as a method to achieve India's freedom only believed in the method of *satyagraha* for the purposes of achieving their independence, unlike Mahatma Gandhi and some of his followers who believed in *satyagraha* and who applied *satyagraha* as a creed throughout all their activities and in their

life; that is the difference, my Lords. And similarly, as the Indian National Congress accepted the position, we in South Africa, the South African Indian Congress, accepted on a similar basis - that means that until we achieve our aims here we are not going to accept the position of violence in any shape or form...

Now, Mr. Cachalia, yesterday you read into the record what the requirements were for a real *satyagraha*; is that correct? - Quite so.

Now, these requirements which you read in yesterday, were they now the *satyagraha* as Gandhi understood it, or was that the requisites that the Indian Congress really demanded from true fighters on this non-violent basis? - Yes, my Lords, in our political movement we must abide by that insofar as violence does not occur. And we hope to achieve our aims through that non-violent method.

And by getting men to comply with those requisites to take part in your campaigns? - Yes, my Lords...

Mr. Cachalia, the passage that was read to you on theory and practice of passive resistance that was typed into the record, you remember the article? - Yes.

From Z.17? - Yes.

Now, what is this? Does this give one the creed or does this give one the qualities that a person should have if he applies the method only? - It gives both, my Lords; how it could be applied in political life and how it could be applied in life generally; one has to apply that from childhood.

Now what I want to know is this: I have some difficulty, you read an article like this and you say this is *satyagraha*. Now what in this article did the Congress movement accept and what did it reject? - You see, the Congress movement, when they applied *satyagraha* in a political programme - then that is confined to that programme only, and in that one is debarred from using any violence, and while the programme is applied of *satyagraha* we must not think in terms of violence at all.

So anybody who says "I wage a non-violent campaign" and who doesn't want to achieve his aims by means of violence, would he conform to what the Congress required of a *satyagrahi*? - That is right. That is how it is, yes...

...Gandhi says a Communist - someone who does not believe in God - cannot be a true *satyagrahi*.³⁴ Do you accept that? - But Gandhi worked, or his Congress worked, out and out with all these sort of people in the movement...

...I want you to reply to this question; I will give you the book and you can have a look at it. Do you challenge that is Gandhi's view as to what a true

³⁴ Gandhi, M. K. *Satyagraha* (Ahmedabad: Navajivan Publishing House, 1951), page 364

satyagrahi is? - You see, there is a difference; the *satyagraha* as applied throughout the life of a person in every respect, and *satyagraha* as it applies in a political movement, to achieve certain aims. That is the difference I wanted to make.

MR. JUSTICE KENNEDY:

Yes, you are repeating the difference as between a man who believes in it as a creed and one who uses it as a policy, as a means to achieve the aims...? - Yes, that's right, my Lord, and that is how Gandhi himself carried on the struggle; that is what I wanted to convey.

Yes, but a true *satyagrahi*, as a true believer in this creed, would the stay of God be necessary? - One accepts the aspect of *satyagraha* in certain policy - then it is not necessary. That is what I wanted to say. But as a creed for life, yes...

MR. TRENGOVE:

Mr. Cachalia, I am going to put it to you - I will be dealing with it - that you and your Indian Congress have made a mockery of *satyagraha*; you have used Gandhi to protect yourselves behind the so-called non-violence; you have used and abused Gandhi and his theories for your own political purposes? - I totally disagree with that statement, my Lords; we have stood for it, we have given our lives for it and we are still standing on that basis...

Who were the members of the National Action Council of the African National Congress and the South African Indian Congress in 1952? Who represented the two Congresses on that co-ordinating body? - It was...

The National Action Council who organised the Defiance Campaign? - From the African National Congress it was the President-General of the African National Congress, Dr. Moroka, as far as I remember; it was Mr. Mandela...

Is that accused No. 6? - Yes, Mr. Nelson Mandela; Mr. Walter Sisulu...

Is that the accused? - Yes. Mr. Oliver Tambo.

Was he later Secretary-General of the African National Congress? - That is right. Y. A. Cachalia, that is my brother.

What was his position in the Indian Congress? - He was the Secretary of the South African Indian Congress. Dr. Naicker - no, myself, and yes, I think Dr. Naicker.

From Durban? G. M. Naicker? - I think so, yes. And Nana Sita - I don't know, but one of the Congress Presidents...

Now you were Deputy Volunteer-in-Chief, the National Volunteer-in-Chief? - Yes.

Who was the Chief Volunteer-in-Chief? - Mr. Nelson Mandela.

Nelson Mandela? - Yes.

Was he for both organisations? - Well, we represented our organisation, the Indian side, and the African National Congress represented the other side.

Now, in selecting your first group of volunteers you say you applied a screening process? - Yes.

You went into a man's background and his religious beliefs, and his suitability. Now, on that basis, Mr. Cachalia, the first volunteers that you elected for duty were all Communists? - The first - no, Mr. Nana Sita was there and he was leading the batch; he was the leader of the batch if I remember correctly.

Your minutes say "First volunteers to go into action were the Communists". Dr. Dadoo, was he one of the first? - Oh, I see...

Was Dr. Dadoo one of the first? - No. Immediately the defiance started the volunteers who were enrolled - the first batch was led by Nana Sita. But prior to that, when certain people were banned under the Suppression of Communism Act - those were the Presidents of the various organisations, that is, Mr. Marks who was the President of the Transvaal African National Congress, and Dr. Dadoo who was the President of the South African Indian Congress, and Mr. Kotane who was the executive member of the African National Congress - they defied first...³⁵

I am referring to the Secretarial Report in A. 83 at page 8. It deals with the meeting of the Congress at Port Elizabeth and minutes say that the two Congresses accepted Dr. Y. M. Dadoo, President of the South African Indian Congress, M. Kotane, J. B. Marks, D. W. Bopape and J. N. Ngwevela as the first volunteers in the Defiance Campaign? - That is correct, but that was not on the basis of those volunteers which I was talking about, the volunteers who were first enrolled. These were the officials who were banned, and the organisation thought that because the officials were banned they should be the first to take action; and that is how these four or five people came to take action.

³⁵ In May 1952, the Government served banning orders on five leaders of the Congresses ordering them to resign from the organisations and prohibiting them from attending gatherings: Moses Kotane, member of the national executive committee of the ANC; Dr. Yusuf M. Dadoo, President of SAIC; J. B. Marks, President of the Transvaal ANC; D. W. Bopape, secretary of the Transvaal ANC; and Johnston Ngwevela, chairman of the Cape Western regional committee of ANC.

They defied the orders in June, before the launching of the Defiance Campaign, and were arrested.

Were they the first volunteers? - They were the first, yes.

The first to defy? - Yes, but these people were not recorded on our volunteers list...

Did they have the requirements that a true volunteer must have? - Yes.

Yes; Dr. Dadoo? - Yes.

A Communist? - Yes.

Marks, a Communist? - Yes.

Bopape, a Communist? - Yes. They undertook to follow the policy of non-violence.

And their religious background, and their political background, and their inherent qualities - the Communists - those were the people who were chosen to be the first batch of volunteers? - In our movement we are concerned with the peaceful policy of non-violence, and therefore when we accepted one we accepted him on that basis. Now Dr. Dadoo had a long political background; he was elected leader by the Indian community in 1939 to lead the passive resistance movement, and therefore we were convinced all along - during our discussions and so on - that he was not the person who was going to harm the struggle of the people who had elected him as leader, and therefore we were quite justified in electing him and these others.

Mr. Cachalia, do you know anything about Communism? - Very little.

Very little? - Yes.

You haven't studied it? - No, I know very little about it.

Do you know the Communist attitude to violence? - Well, it depends, you see for instance, when they work in our movement, they must give us an undertaking that they will not resort to violence, and will abide by our peaceful methods. If that is agreed to, and if we are satisfied then we will accept them as such.

Mr. Cachalia, why do you ask Communists to assure you that they will not resort to violence? - We ask anybody who comes into the movement; we have to be satisfied about that.

Do you know that Communists believe that they must work for the overthrow of the state by violence, and the establishment of a Communist state in its place - do you know that? - I don't know. They may have that idea, but it may change in

different circumstances and so on...

And if they don't change? - If they don't change it is not my quarrel with them - but when we deal with them individually, not as members of the Communist Party, it is on behalf of our organisation... They don't come into the organisation with their Communistic policies which would be definitely rejected; that they cannot pursue in our organisation...

In those five instances you were not really concerned about their beliefs, and their politics and their background and so on? - No... when we selected volunteers - for instance when Mr. Kathrada who is also a Communist was accepted as a volunteer, we accepted him because we knew he would accept our policy of non-violence... If we were in doubt we would have put him aside.

MR. JUSTICE BEKKER:

Can you by way of example refer to any person who was appointed a volunteer only after he had been screened? - Yes, my Lord. The method which we adopted was this: we had a form on which the full name, address, a man's political belief, his religious belief, his education, his work - where he worked previously over the past couple of years - and all these sort of things were all mentioned on that form. From that then it was easy for us to find out his background. We would also know then what Church or religion his parents belonged to. Then if we accepted him we would give him a code and tell him that this is our code by which he has to abide. He reads that and if he is satisfied then he has to sign a pledge...

Just a minute; can you remember the wording of the code, not the actual words but the effect of it? - Yes, my Lord; the effect of the code was something to the effect that he would have to carry out the non-violent method of struggle; he would not use violence in any form; he would not be provoked - and some such things.

Then he had to sign a pledge? - Then he had to sign a pledge.

To that effect? - To that effect.

MR. TRENGOVE:

Now, Dr. Dadoo was also a member of the Passive Resistance Council, is that correct? - Yes.

Who were the other members? - I am talking now of 1947. Mr. T. N. Naidoo and Mr. Nana Sita, Dr. Dadoo, myself, and my brother was there...

Y. A. Cachalia? - Yes, those were for the Transvaal...

And from Natal? - I don't know all the names but Dr. Naicker was there, Mr. A. I. Meer was there, Debi Singh was there - a gentleman by the name of Dudoo (?) was there; as far as I remember they were the people who were there.

Now, you know the Communist Party was banned in 1950? - Quite, yes.

The people who belonged to the Communist Party, and also to the Indian Congress before 1950 - take a man like Dr. Dadoo for instance - why would he belong to both? Was there any difference in the aims and objects of the two political parties, do you know? - Well, a person may belong to many organisations; for instance, I belong to an organisation called *Jamait-ul-Ulema-e-Transvaal*...

We are talking of political parties? - Well, in India and here, too, for instance - well, here very little but in India - the *Jamait-ul-Ulema-e-Hind* was a political organisation... and it worked on the same lines - and we formed this organisation here as well. And I belonged to that organisation too, and at the same time I belonged to the Congress movement as well.

Are the objects the same? - Well, this has something to do with religion...

Yes, well, I am talking of purely political parties? - And at the same time they have a political programme as well.

The Communist Party in South Africa was a political party, was it not? - I agree.

And the Indian Congress was a political party too? - Yes.

Was there any difference between the two? - You see, Mr. Trengove, although Congress is a Congress, one must make a distinction, that it is not a party strictly speaking; it is an organisation for liberation. For instance, I will give you an example again. In India the National Congress which was struggling for the independence of India had the members of various political parties in India, for instance the Socialist Party was represented, the Communist Party members were represented there. Then there was *Jamiat-ul-Ulema-e-Hind* as I mentioned - that was also represented in the Congress. Then there was another organisation that was completely non-violent in character which was led by Abdul Ghaffar Khan in north India, and his organisation was known as *Khudai Khidmatgar*, and they were also represented in the Congress. Similarly, here in the Congress we had people of all views in our movement. So it is not strictly speaking a party - like for instance the Liberal Party here, or the Labour Party, or the Nationalist Party, all of which have fixed aims. It is not on that basis...

Now, Mr. Kathrada, accused No. 3, was he a volunteer, a defiance volunteer in the Defiance Campaign? - Yes.

Was he screened? - Yes.

He was found fit? - Yes.

According to his background and his religious beliefs? - Well, he was a Communist and apart from that I know the family very well; in fact his father was a partner with my father too some years ago - perhaps he doesn't know - and his uncle is one of the...

Yes, you know his family well? - Yes.

And although he was a Communist you thought he was suitable? - Yes, he would abide by our organisation's decisions.

Have you any reason to believe that he didn't know what the South African Indian Congress policy was? - No, he knew it.

He knew it? - Yes.

And your association with him - would he be the type of Congress executive who would in his speeches and in his actions propagate Congress policy? _
Through Congress platforms?

Yes, Congress platforms. - Of course he would.

Mr. Cachalia, the African National Congress in their liberatory struggle had the unqualified support of the Indian Congress movement, is that correct? - We worked in alliance with them on an equal basis.

But the documents say that the South African Indian Congress movement throughout this period, 1952 to 1956, unconditionally, without any qualification, supported the African National Congress in its liberatory struggle? - Yes, and we were convinced that they, too, had the programme, for instance in 1949 - they passed a resolution to the effect that they would not collaborate, and that they would call upon the Native Representative Council and the Advisory Boards to resign - and some such things, and that was based on the non-violent policy. We had very thorough discussions with them and we were satisfied that they also intended carrying on their struggle on the non-violent basis. Therefore they naturally had the unqualified support of the Indian Congress.

MR. JUSTICE BEKKER:

You mentioned discussions with them; did you have full discussions with them? - Yes.

Can you recall when this took place? - As a result of that, in 1947, an agreement was entered into - it was read yesterday - between our President and Dr. Xuma.

Was the question of violence and non-violence discussed at that time? - Yes.

And on what lines did the discussion go? - Well, eventually it resulted in this document which was submitted yesterday, on cooperation, and we were satisfied that they had a programme of non-violence, too, in their struggle.

Who acted on behalf of the Indian Congress? - The Presidents; it was left to them.

MR. TRENGOVE:

Were you present at those discussions? - No, it was reported.

You say that was in 1947? - 1947, yes.

Do you know that in 1947 the African National Congress still believed in deputations and negotiations with the Government, is that so? - We still believe even today...

I am talking about the African National Congress? - We all believe, even now today, we want to carry out our objectives through negotiation - there is no other way.

Do you know that in 1949 the African National Congress made a fundamental change in the nature of their political struggle? - What change?

I want to know whether you know? - No fundamental change took place. The question of negotiation still holds today. The change was that now they had to take a stand to oppose - if negotiation did not come about they will have to struggle; that was the change that was brought about.

Mr. Cachalia, do you say that there was no fundamental change in the form of struggle in ANC policy before 1949, and after 1949? - The fundamental change I suppose was that now they were prepared to wage struggle - it came to that stage. That was the only change I know of. I don't know if that was a fundamental change or not. But they wanted to pursue their struggle and get their rights - and now they had to wage a struggle.

And before 1949? - Before 1949 they were still trying to make representation. I don't recollect very well, but before, too, they had to take some positive action, I understand, on the passes and so on.

Before 1949? - Long before that, yes. I don't know the dates - I am not very conversant with it, I have read about it - but they did that. Women led a movement at the time - a woman who led the movement told me about it, how she led the movement, she told me about it - that was about 1938 or 1940 I think.

Where do you get your information as to what ANC is? - We also know about the policy of the Nationalist Party although we don't talk...

I am not talking about...? - And yet we have no direct contact with them...

Don't evade the question, Mr. Cachalia, I am not talking about that...? - On the question of fundamental change, I am relating my experiences, but your question now is "where do you know the ANC policy from", from that point of view I am replying...

But I want to know: you didn't make an ally of the United Party; you didn't make an ally of the Nationalist Party; you made an ally of the African National Congress. - Yes.

Now, where do you get your information as to what their policy is? - Since we made allies with them we discussed it in the joint committee.

You had discussions in joint committee? - Yes.

They sent you their annual reports? - They also sent annual reports.

They sent fraternal delegates to conferences? - Yes.

Your people appeared on ANC platforms? - Yes.

In joint campaign? - Yes, in some cases, if we are invited.

You had joint co-ordinating committees where common campaigns were discussed and views were discussed? - Quite.

Yes; so at all times you people were kept fully informed as to what African National Congress policy was? - Yes.

I want to put it to you that the fundamental change in African National Congress policy is that in 1949 they abandoned negotiation and representation as being ineffective, and they drew up another Programme of Action in 1949 which became the basis of their liberatory struggle? - No, my Lords, it is not the question of abandoning the programme of negotiation; it is an advancement from that to a positive form of struggle or protest, and part of the negotiations still remains - that part of it still remains...

Now, Mr. Cachalia, I want to deal shortly with the activities of the Congress movement from about 1952? - Yes.

The Indian Congresses held annual conferences, is that correct? - The South African Indian Congress?

No, the Provincial Congresses; the Transvaal Indian Congress and the Natal Indian Congress. - I think the Natal Indian Congress did. We did not hold annual conferences, but we used to have working committees and sometimes conferences.

Yes; and at these conferences these agenda books were prepared before the time, is that correct? - Yes.

Secretarial reports were prepared? - Yes.

That was discussed by the Secretariat before the time? - Yes. And the Executive too.

Yes. And before it was actually submitted to the Congress it was approved by the Executive? - It was generally discussed in the Transvaal Indian Congress. As far as the South African Indian Congress was concerned, I think the Secretary used to prepare these.

Yes. - It didn't go to the Executive meetings.

And the agenda book also had the speeches of the Presidents? - Quite correct.

It was also prepared beforehand? - Yes, the President would do that.

And then it had the minutes of the Congress? - Quite.

The previous minutes? - Yes.

And these were all bound together in these agenda books? - Yes.

And they were then submitted to Congress for approval? - For conference.

To conference for approval? - Well, the President's Address for instance was usually read in the conference; the minutes were approved; the secretary's report would be read; and that was discussed, of course, at the conference.

And it is either accepted or rejected by the conference? - Well, either some part was rejected and so on...

Were you ever present when any part of the secretarial report was rejected? Do

you know of any case where the report was rejected? - I don't recollect where this happened...

You don't recollect? - No.

I want to put it to you that it would be - these secretarial reports could be relied on if one had to determine what Congress policy was on a certain matter; it was a guide to Congress policy? - Yes... in what respect?

Any respect? - The resolutions are the policy actually laid down at the conferences.

And if anything in the secretarial report is in conflict with policy that would be taken out? - Well, either it would be taken out or it remained there, because this is bound in advance.

MR. JUSTICE BEKKER:

If for instance something appears in a secretarial report being bound in those volumes, and say conference doesn't approve of it, is it minuted or what happens? - It is minuted; the incoming secretary would take note of that and at the next conference they would report that.

So would it be correct to suggest that unless there are minutes showing that the report or portions of the report was rejected, one can take it as approved? - You see, as far as policy is concerned, the policy is reflected in the resolutions.

I am not talking about whether it is policy or not; but if there is anything in the report which does not meet with the approval of conference, and there is a debate on it, that would be minuted? - That normally would be minuted, yes.

MR. TRENGOVE:

Now, apart from the annual, or biennial, conferences, the day to day work of the Congress movements, by whom was that done? - By the officials in the various provinces.

The officials in the various provinces? - Yes.

The Transvaal Indian Congress had its officials? - Yes.

And did they have a working committee? - Yes.

And Natal had the same? - Yes.

And they carried out the day to day policy of the Congress? - That is right.

And the working committee consisted of members of the Executive, is that correct? - Well, in the Transvaal the working committee was elected in a general meeting whenever it is held. It is supposed to be held biennially - sometimes it takes longer - and the working committee afterwards elects the Executive from the working committee generally.

Now who was the working committee in the Transvaal during the period 1952 onwards? - It would be a long list. I think there used to be eighteen members, if I remember correctly.

Just give us a few names. - Well, for instance, Nana Sita, Mr. Moodie...

Was Kathrada on it? - Yes, I think he was.

And Patel and Moosa, A. E. Patel and H. M. Moosa? - Yes.

They would also be on it? - Yes.

The Indian Congresses used to send fraternal messages and fraternal delegates to other congresses? - Yes.

And they used to invite people to send fraternal messages to them? - Yes.

Is that correct? - Yes, quite.

And in the Transvaal did they have any full time employees? - In the Congress?

Yes, doing Congress work? - In 1952? We were working full time but we were not employed.

What was Kathrada's work, what does he do in private life, apart from - what is his job? - Kathrada?

Yes? - He works full time in the political movement.

What political movement? - The Congress.

Is he a full time worker? - Yes, full time.

Is he paid by Congress? - No, he does not get paid.

Then how does he live, do you know? - He has got his family - I don't know...

He gives all his time to this work? - Yes. It is very welcome if anybody gives full time without taking pay.

Yes. Any others who work actively like that? - I worked like that.

Well, you've got a business? - At the time of struggle we give up businesses.

But I mean people who devote all their time to this work? - Yes, if they can rely on members of their families they will do that.

Are there any other people? - Well..

What about Faried Adams, what does he do? - He also at times works full time; at times he works for his own living - there are others too - I think Adams was working at some places.

But he also worked full time during this period for the Congress, at times? - Yes.

And the Congress movements, in the Indian Congress, the various Congresses - the Natal Indian Congress, the Transvaal Indian Congress - they kept each other very fully informed as to their activities, not so? - Insofar as the work they did on the common programme was concerned they kept each other informed; but for instance, if they had anything to do with education, and if there is a report, they would send it to us...

In matters affecting the liberatory struggle?- They must inform us, yes.

There was a regular exchange of correspondence? - Yes, quite.

And agenda books and circulars and so on? - The Natal Indian Congress - if somebody goes and brings it, or they might fetch a copy of their agenda book to the Congress - apart from that it is not that they always send everything to the Congress.

But you were satisfied that there was very close cooperation between the Congress movements in regard to the liberatory struggle? - Yes.

And in the same way the South African Indian Congress activities were also fully discussed at the provincial Congress organisations? - The policies actually laid down by the South African Indian Congress - first came to the provincial level, then it would be carried out.

Now, Mr. Cachalia, these fraternal messages that you get and that you publish in your agenda books, you invite people to send these fraternal messages, is that correct? - Yes, we invite - we inform them that we are holding our conference.

And you usually invite sympathetic organisations and individuals to send these

messages? - We write to practically all organisations...

I just want to know for instance, you get a message from Chou En-lai in China on a certain day? - Yes.

Do you invite him to send that message? - Yes.

Yes? - We send practically all over the show - and those who feel like sending messages send them.

And did you invite President Eisenhower to send a message? - We must have asked him, we asked everyone. We asked the Prime Minister of Britain too - I ask everyone.

Oh, you ask everyone? - Yes.

Certain people respond and others don't? - Some respond and some don't, yes.

Now, your organisation - I am talking about the Congress movement generally - they also held public meetings to propagate their views and their policies? - The Indian Congress?

Yes. - Yes.

And the purpose of those meetings was to keep people informed as to what you wanted, to educate the people for the struggle and to tell them what your objects and purposes are? - Rather put it this way: what they want us to do... our masses...

MR. JUSTICE BEKKER:

I don't quite follow that. - You see, we hold meetings if there is a problem, say in education or a social or a political matter. A meeting is called and held, and at that meeting people will speak and eventually they would pass a resolution based on what the people want. It comes from the floor, it comes from the platform, but it is the views of the people as such which is being taken into account.

MR. TRENGOVE:

But you hold meetings in furtherance of the liberatory struggle? - Yes, this was part and parcel of the community's movement, you see.

Part and parcel of the communities? - Yes...

And at these meetings your object was to tell the people what you wanted in the liberatory struggle and how you were going to get it? - It is a matter of the question which is before them, and we know the feelings of our community

generally, and that is placed before them. If there is any information to be given on special subjects then we only give information at these meetings.

You didn't hold meetings in order to educate the masses politically? - That too happens, yes.

That also happens? - Yes.

And then you had speakers at those meetings who know the nature of the struggle and the policy of the Congress, and you tell the people? - Yes.

What this policy is, and how freedom should be achieved, so that the masses must know; they must be politically educated. - Yes.

And then, Mr. Cachalia, you also made use of documents as part of your propaganda machine - publications, isn't that so? - What publications?

I'm asking you? - I want to be clear on this...

Do you know the monthly bulletin *New Youth*? - I don't know it, no...

Do you know the bulletin *The Call*? - I think I have seen one or two copies of that. I don't know who published it...

Do you know the bulletin published in Natal, *N.I.C. News*? - Since when?

Since 1953. - It is possible I have seen some copies of it, but I am not very conversant with it...

Do you know the publication *Listen Young Friend*? - No, I have never heard of it...

Published by the South African Youth Congress. - No, I have never heard of it.

Now, apart from its own publications, Mr. Cachalia, the Indian Congress movement supported a large number of other publications. I think you mentioned two this morning. - Yes.

Advance and *Fighting Talk*? - Yes. *New Age*, *Advance*...

And apart from support for *New Age* and *Fighting Talk* mentioned this morning, you don't know of any other publications that were being supported? - No, I really don't know, unless I see them...

By whom was *Fighting Talk* published? - It originally was published by the Springbok Legion.

The Springbok Legion? - Yes; and now I think some committee handles this...

Now, why did the South African Indian Congress tell its people to read specifically *Fighting Talk*? - Because it undertook to write articles on group areas and questions affecting Indians...

So you were using that to make known the views of the Congress, the Indian Congress, to the Europeans? - Yes, our particular difficulties, yes.

But you told your people to study *Fighting Talk*? - Yes.

And that they had to study it because *Fighting Talk* stood four-square behind the whole Congress movement in the liberatory struggle? - Yes; we would ask them to study it as well and read the articles, and support this organ for this purpose, because take for instance if *Die Transvaaler* was sympathetic to our cause and if they would write articles which would be to the benefit of our Indian cause, we would ask all the Indians to buy that paper too and support *Die Transvaaler*...

Mr. Cachalia, forget about *Die Transvaaler*; we are dealing with *Fighting Talk*. - Yes, but I am giving you an example...

You know that *Fighting Talk* published a lot of political matter? - Yes.

Dealing with various aspects of the liberatory struggle? - Yes.

And matters connected with the liberatory struggle? - Yes.

Now, in regard to the political matter published in *Fighting Talk* you never found it necessary to tell your people that anything in *Fighting Talk* was contrary to Congress policy? - No. You see, people know this much, that these monthly magazines are magazines, and where an article appears it is expressed by the writer, and people are intelligent enough in this world to know from that, well, how this article is - they will judge from whose views are these, and they will come to their own conclusions from that...

MR. JUSTICE KENNEDY:

You have said, I think, that you can give no details of the committee which ran it? - No, I don't know, but I know that Ruth First is the editor of the paper *Fighting Talk*...

JUNE 24, 1960

Just to clear up one organisational matter, the South African Indian Congress, I think you said, met every two years? - It is not necessary that it meets every two years. It meets sometimes the following year, sometimes two or three years and so on.

According to the Constitution, the constituent bodies sent delegates? - That is correct.

And the Constitution contained in this Agenda Book, A. 83, that makes provision for each province sending delegates, the Transvaal, Natal and so on. Now those delegates were members of the constituent bodies in the provinces? - That is correct.

And they were chosen by the provinces to represent the constituent bodies at the conference? - That is correct.

Now I was dealing yesterday with the question of publications, and we were dealing with *Advance* and *Fighting Talk*. - Yes, my Lords.

I want to put it to you that the Congress movement, the Indian Congress movement attached great value to propaganda as a weapon in the liberatory struggle? - Propaganda, yes.

As a weapon in the liberatory struggle? - We like to see that news goes out and is read by everyone, as much as it can spread, yes.

In order to get the people to participate in the liberatory struggle? - Yes, and get the people informed as well, yes.

Now in this Agenda Book, in the Secretarial Report - this is A. 83 - under paragraph 64, it says that the South African Indian Congress must establish a central propaganda machinery for information and guidance of your active workers, is that correct? - Yes.

And that regular bulletins and directives must be issued to our organs, that is the constituent bodies? - Yes.

And a check must be maintained on the activities in all fronts. Then it says, "In these difficult times of bannings and restrictions, we must make greater use of written propaganda", and it says, "we must support such papers as *Advance* and *Fighting Talk*, which in the face of financial difficulties are serving the cause of the liberation movement"; we must support them financially or otherwise. - Yes.

Now that was the attitude of the Congress movement to *Advance* and *Fighting*

Talk and papers of that nature? - Yes.

Financial support and support by other means because they are weapons in the liberatory struggle? - They were giving the news...

Now let us take the first *Fighting Talk* under the new administration when it was taken over from Springbok Legion, the *Fighting Talk* of March, 1954. Now you said quite correctly yesterday, and on page 1 this is what the editor is saying: "*Fighting Talk* has for many years been the organ of the Springbok Legion. It is no longer. From here on it is an independent monthly, edited and managed by an independent committee of supporters of the Congress movement. The members of the three Congresses, the African National Congress, the South African Indian Congress and the South African Congress of Democrats." - When was that published?

In March 1954? - I don't know at all, because I think I was banned in April or March...

Mr. Cachalia, your banning order was served on you on the 5th of June, and within thirty days you had to resign. I have a copy of the banning order here. - Yes, that can be correct.³⁶

Within thirty days you have to resign. Now this was in March. - But I don't remember taking any resolution by the Transvaal Indian Congress...

Now the type of paper that *New Age* is, with its political line, would you regard...? - I don't agree with their views at all, with the views they express. I don't agree all the time.

Why not? - There may be all sorts of news with which I don't agree. As far as we are concerned, we are interested in the news which is given and which is taken up as far as the Congress movement is concerned, which affects our community. Then we are interested. And it gives the news very liberally... The point is that if the *Transvaaler*, as I pointed out yesterday, would view our news liberally, we would support them. We will ask our people to support it, because there is more news, and support further from two points of view that it goes to a certain section of the people, and we will be able to get the other people eventually to understand our position as well. From that point of view we support that paper.

Mr. Cachalia, you know that what you are saying now is not correct? - I am saying absolutely correct. I will give you an instance, for instance of the *Transvaaler*. During the war some of us thought that this war should not be

³⁶ Mr. Cachalia told the Court later that he had been confused about the date of banning. He had sent his resignation to the Transvaal Indian Congress on April 16, 1954, for purely personal reasons, and then some of the leaders had requested him to withdraw his resignation. The banning order was received subsequently and his activities had stopped.

waged, and during the war I used to go to the editors and they used to publish our news and they used to give our news very prominence in those days, and although I couldn't read Afrikaans, I used to buy the paper every day.

And did you hold this paper out to your people as your ally in the liberatory struggle? - I told people that look, read the *Transvaaler*, they give better news about the war...

The Chairman of the Transvaal Indian Youth Congress is E. Moolla. Do you know E. Moolla? - Yes.

Was he a prominent member of the Indian Congress? - He was a member. My Lord, every Indian who is over the age of eighteen is reckoned, according to our constitution, as a member, and when they got to hold a public meeting, and when public meetings are held, you give notice to that effect, and everyone is entitled to participate in that. There is no formal application or anything whatsoever. So they are all members.

I am talking about prominent members. Prominent you know is taking an active part? - Prominent member... will mean how the people look at him, that is one, and, secondly, how much he takes part in the activities of the movement. Now Mr. Moolla did take quite a bit of activity in the movement, that is correct.

Then there was Moosa Moolla, Accused No. 11? - Yes.

He was the Joint Honorary Secretary of the TIYC according to this bulletin? - Maybe.

Do you know him as a prominent member in the TIC? - He was, he was a volunteer, yes...

Then there was Sulliman Esaakjee, do you know him? - Yes.

Also a prominent member in the TIC? - Yes. He is a good worker, of course.

The methods of struggle proposed in the Plan, do they in any way resemble the passive resistance, or rather the methods used in the passive resistance campaign or campaigns conducted by the Indian Congress? - That is so, my Lords.

Would you say that the Defiance Campaign was one involving violence? - No, not at all, my Lords.

Now in the report of the Joint Passive Resistance Council, which I referred to yesterday - I did not read it - on page 7 of the report there is a resolution which refers to volunteers; would you have a look at that, please.

MR. JUSTICE RUMPF:

Page 7 of the report; is it this report?

MR. KATHRADA:

No, my Lords, this is the report of the Joint Passive Resistance Council referred to by me yesterday, a report of the Joint Passive Resistance Council of the Transvaal Indian Congress and the Natal Indian Congress, my Lord.

MR. JUSTICE RUMPF:

Yes, what is the question?

MR. KATHRADA:

Also in the report of the Joint Passive Resistance Council there are references to volunteers, is that correct? - Yes, my Lords, on page 7 of the Joint Council's report.

Now, can you suggest where the idea of volunteers as referred to in these two documents originated? - The idea of volunteers, my Lords, originated from the struggle which the Indian people had in the country, and also from the struggles of the Indian National Congress which were conducted under the leadership of Mahatma Gandhi in India.

Now, referring to the Plan of the Joint Planning Council, was the plan adopted by the Congresses? - Yes, my Lords.

And by the South African Indian Congress? - Yes.

Now I would like to briefly quote from the Presidential Address of Dr. Dadoo at the Conference of the SAIC in 1952...

"The path of survival is the only path before us. It is but natural, it is but right and it is inevitable that we as a people must survive and make progress towards our freedom. It was with this choice before it that the Conference of the African National Congress in all seriousness and with a full understanding of its implications decided to adopt a practical plan of action for the Defiance of Unjust Laws. It is a grave and historic decision which if implemented can and must change the course of South African history. It throws down the gauntlet to the Government's policy of 'back to the Dark Ages'. It breathes new hope to the oppressed peoples of our land.

There are critics who say we must hasten slowly. But to sit quietly and do nothing now would be to allow free play to those evil forces which are

bent upon destroying us. It is also being said that to launch out on a struggle now is to put ourselves in danger, but the triumph of truth can never be attained without risking danger.

On the other hand, there are critics who say that the demand for the repeal of certain specified laws does not go far enough, that our demand must be for full and equal democratic rights. The African National Congress, however, has been wise in limiting its demands - for the laws named for repeal are the laws which constitute the greatest threat to our very existence. Moreover, who could deny that if we can succeed in obtaining the repeal of these laws by our struggle, we would not have taken a long step towards the realisation of our objective of full citizenship rights?

The 1952 session of Parliament has already started its work and we urge the Government and Parliament to take steps to answer the call of the African National Congress by repealing by the end of February the unjust laws specified by its resolution. It is fitting that the Government should be reminded of the fact that a government by a minority of the people of a country cannot continue for long to impose its will with impunity on the majority of the people. The sovereign rights of Parliament are derived from the people as a whole and not only from a section. For the Union Parliament to be sovereign it must derive its power from all sections of the South African population, both white and non-white. A Parliament can only sustain itself when it respects the natural rights of man and conducts itself on the broad principles of democracy. Parliament as it is presently constituted in South Africa violates every principle of the Universal Declaration of Human Rights. As long as these principles are not recognised it will be the primary duty of the people to fight for their recognition."

Mr. Cachalia, does this correctly set out the basis upon which the Indian Congress decided to launch its campaign? - That is so, my Lords.

Now, prior to the actual embarking on the Defiance Campaign, did the African National Congress and the South African Indian Congress take any other steps with the Government in order to attempt to secure the repeal of those laws? - Yes, my Lords, letters were addressed to the Prime Minister requesting to repeal the Acts before the Congresses embarked on the Defiance Campaign.

My Lords, I will have to refer to the correspondence which passed between our organisation and the Government... Annexure G, dated 21st January 1952.³⁷

AFRICAN NATIONAL CONGRESS

³⁷ In the transcript the date is indicated, in error, as 21st February 1952.

P.O. Box 9207, Johannesburg
21st January 1952

The Prime Minister of the
Union of South Africa
House of Assembly
Cape Town

Sir,

In terms of the resolution adopted by the 39th session of the African National Congress held at Bloemfontein we have been instructed to address you as follows:

The African National Congress was established in 1912 to protect and advance the interests of the African people in all matters affecting them, and to attain their freedom from all discriminatory laws whatsoever. To this end the African National Congress has, since its establishment, endeavoured by every constitutional method to bring to the notice of the Government the legitimate demands of the African people and repeatedly pressed, in particular, their inherent right to be directly represented in Parliament, Provincial and Municipal Councils and in all Councils of State.

This attitude was a demonstration not only of the willingness and readiness of the African people to cooperate with the Government but also evidence of their sincere desire for peace, harmony and friendship amongst all sections of our population. As is well-known the Government through its repressive policy of trusteeship, segregation and apartheid and through legislation that continues to insult and degrade the African people by depriving them of fundamental human rights enjoyed in all democratic communities, have categorically rejected our offer of cooperation. The consequence has been the gradual worsening of the social, economic and political position of the African people and a rising tide of racial bitterness and tension. The position has been aggravated in recent times by the Pass Laws, Stock Limitation, the Suppression of Communism Act of 1950, the Group Areas Act of 1950, the Bantu Authorities Act of 1951 and the Voters` Act of 1951.

The cumulative effect of this legislation is to crush the National Organisations of the oppressed people; to destroy the economic position of the people and to create a reservoir of cheap labour for the farms and the gold mines; to prevent the unity and development of the African people towards full nationhood and to humiliate them in a host of other manners.

The African National Congress as the National Organisation of the African people cannot remain quiet on an issue that is a matter of life and death to the people; to do so would be a betrayal of the trust and confidence placed upon it by the African people.

At the recent Annual Conference of the African National Congress held in Bloemfontein from the 15th to 17th December 1951, the whole policy of the Government was reviewed and after serious and careful consideration of the matter, Conference unanimously resolved to call upon your Government, as we hereby do, to repeal the aforementioned Acts by not later than the 29th day of February 1952, failing which the African National Congress will hold protest meetings and demonstrations on the 6th day of April 1952, as a prelude to the implementation of the plan for the defiance of unjust laws.

In the light of the conference resolution we also considered the statement made by the Prime Minister at Ohrigstad on the 5th instant in which he appealed to all sections of our population, irrespective of colour and creed to participate fully in the forthcoming Jan Van Riebeeck celebrations. It is our considered opinion that the African people cannot participate in any shape or form in such celebrations, unless the aforementioned Acts which constitute an insult and humiliation to them are removed from the Statute Book.

We firmly believe that the freedom of the African people, the elimination of the exploitation of man by man and the restitution of democracy, liberty and harmony in South Africa are such vital and fundamental matters that the Government and the public must know that we are fully resolved to achieve them in our lifetime.

The struggle which our people are about to begin is not directed against any race or national group but against the unjust laws which keep in perpetual subjection and misery vast sections of the population. In this connection, it is a source of supreme satisfaction to us to know we have the full support and sympathy of all enlightened and honest men and women, black and white in our country and across the seas and that the present tension and crises have been brought about not by the African leaders but by the Government themselves.

We are instructed to point out that we have taken this decision in full appreciation of the consequences it entails and we must emphasise that whatever reaction is provoked from certain circles in this country, posterity will judge that this action we are about to begin was in the interest of all in our country, and will inspire our people for long ages to come.

We decide to place on record that for our part, we have endeavoured over the last forty years to bring about conditions for genuine progress and true democracy.

(Signed) Dr. J. S. Moroka
President-General
W. M. Sisulu
Secretary-General

To your knowledge, Mr. Cachalia, is that the text of a letter sent by the African National Congress to the Prime Minister? - Yes, my Lords.

When was the Defiance Campaign actually embarked upon? - On the 26th June, 1952, my Lords.

Now you have already told the Court that you were appointed Deputy National Volunteer-in-Chief? - Yes, my Lords.

I would like to obtain from you further information on your appointment in that capacity, and also certain information in regard to volunteers. As Deputy Volunteer-in-Chief, was it part of your function to assist in organising the volunteers and in training volunteers? - That is so, my Lords.

I understand that you were concerned particularly with the Indian volunteers? - Yes, that is so.

You had something to do with selecting volunteers? - Quite correct.

In making the selection of volunteers, was any investigation made into the background of the persons concerned? - Yes.

Who made these investigations? - Well, anyone who would be in charge, and I personally made a lot of investigation.

How did you make this investigation? - Well, the investigations were based on his background, his religious beliefs and whether he could convince one that he would abide by the non-violent nature of the struggle.

MR. JUSTICE BEKKER:

What was the purpose, what was it you were afraid of, or what did you try to avoid? - My Lords, we wanted to ensure that he would not indulge in violence. Now in going into the background we tried to find out whether in his life he was a person...

You wanted a peaceful individual as a volunteer rather than one who might flare up, is that the point? - That is the point, my Lord.

MR. KATHRADA:

Were instructions given to volunteers in regard to their conduct in the campaign? - That is correct.

What sort of instructions were given? - The instructions were all along that they should be peaceful, they should be obedient, they should take orders from the Board or from the organisation and carry them out in spite of any humiliations or difficulties, and for which orders a code was laid down.

MR. JUSTICE BEKKER:

Do you know whether anybody did that on behalf of the African National Congress movement? - Yes, my Lord.

Who was it who did that? - In Johannesburg the Volunteer-in-Chief of the Transvaal, Mr. Seperepare, that was his name, my Lord.

MR. KATHRADA:

Did the Indian Congress regard the Defiance Campaign as a success or a failure? - We regarded the campaign as a success, my Lords.

In view of the fact that the campaign did not lead to the repeal of the laws in question, in what sense was it regarded as a success? Did the participants indulge in acts of violence? - No, no, not at all, my Lords. The success was that a substantial number of people took part in defying the laws - more than 8,000 if I remember correctly - well, this was the future support of carrying on the struggle eventually. These people would carry out the Congress policy, more than 8,000 strong, on a non-violent basis. Also, my Lords, it made a great impression on the other sections, particularly the European section of the population as well.

MR. JUSTICE BEKKER:

In what sense do you suggest it made an impression on the European population? - My Lord, when they saw this struggle going on, there were people who came and wanted to defy in collaboration with us; they also wanted to undergo the same suffering as we were undergoing, by going to gaol. There were people who set up committees for that purpose, to support the movement, to support the defiance and so on, and this sort of support generally came from the Europeans.

MR. KATHRADA:

On your own knowledge do you know whether contributions were received from Europeans for the welfare of dependants? - Yes, my Lords.

At the time of the Defiance Campaign was any organisation formed among the Europeans? - Yes, my Lords, at the end of 1952 a number of Europeans said that they would like to assist us and they were prepared to undergo the same suffering as we were suffering and defy the laws; there were people like Mr. Patrick Duncan, Freda Troup, and quite a number of people approached us, and at that stage we felt that if the Europeans actually wanted to take part in the struggle then they should do so through some organisation, some European organisation. As a result of that the African National Congress and the South African Indian Congress sent invitations to quite a number of Europeans in Johannesburg to attend a meeting where we had a representative of the African National Congress, a representative of the South African Indian Congress, and our position was explained. We also explained that if they felt like supporting this movement and taking an active part in the movement, then it would be desirable for them to form an organisation and work through that organisation in alliance with the South African Indian Congress and the African National Congress. A meeting of that nature was held and quite a number of people attended that meeting. I was also present. As a result of that meeting an organisation was formed which was afterwards named the Congress of Democrats.

Did the Defiance Campaign have any international repercussions? - Yes.

What were they? - Well, after conducting the struggle for a while countries all over the world, in many places, approved the struggle; they sympathised with the cause and eventually the question of apartheid was taken up by the United Nations.

After the Defiance Campaign what was the attitude of the Indian Congress on the question of passive resistance and the method of struggle? - The attitude of the Indian Congress insofar as the defiance was concerned, and the passive resistance movement we were conducting, our attitude was that the Defiance of Unjust Laws campaign was carried out according to the non-violent basis.

Is the position then that after the Defiance Campaign the Indian Congress maintained the policy of non-violence? - Oh, certainly, yes. We were more convinced by then that the Indian Congress, together with the African National Congress, could carry out its campaign, could carry out our non-violent struggle. We were then more convinced than when we started.

MR. JUSTICE RUMPF:

About what? - We were more convinced that in the future, the Congresses, and more particularly the African people, would be capable of carrying out the

struggle non-violently; after the experiment of defiance.

MR. KATHRADA:

I now want to refer you to Exhibit E. 28, which is a document entitled "Self-discipline for Volunteers of the Congress of the People", purported to be a speech by Dr. G. M. Naicker, President of the Natal Indian Congress, delivered at the first Natal Conference of the Congress of the People in Durban on the 5th September, 1954. My Lords, I believe this document was read in as C.55, at page 2043 of the record. Have you read this document, Mr. Cachalia? - No.

MR. JUSTICE RUMPF:

Well, do you know that document? - I have seen this document, my Lord.

MR. KATHRADA:

Did you say you have read this document before? - Yes, I once read this document...

Is it consistent with the policy of non-violence of the Congress to which you have referred? - Yes, my Lords.

Is it consistent or inconsistent with the teachings of Mahatma Gandhi? - It is certainly consistent with the teachings of Mahatma Gandhi.

Does this document also reflect the entire policy of the Congress, not only the non-violent aspect of it? - No, my Lords. I see this document is divided into two parts. The first part on pages 1 and 2, one could say that the first part is adopted by other Congresses as a policy in pursuing our method of struggle. But insofar as the second part is concerned, my Lords, which is on pages 3, 4 and 5, this deals with - very vaguely of course - the constructive programme as Mahatma Gandhi put into effect in India. Thereby he accepted non-violence as a creed, and through this programme he eventually visualised setting up in India a state which would be a social classless state based on non-violence. At no stage have we accepted that; the Congresses have not accepted the policy of non-violence as a creed; therefore the second part I think does not operate as far as the Congresses were concerned.

Is it your contention then that this document of Dr. Naicker's - the latter part of it - puts forward a creed and way of life which goes further than Congress policy? - Quite so, my Lords.

Do you know whether this document was circulated? - I wouldn't know how it was circulated...

Mr. Cachalia, it has been suggested that the Congress movement regarded the end towards which it was working as far more important than the methods employed in the struggle for the achievement of those aims, and that consequently it was prepared to resort to any methods including violent ones, in order to attain these ends? - No...

Now, would you please tell the Court whether or not you personally hold the view that the end is all important, and that consequently all methods of struggle including violent ones are permissible? - No, my Lords. As far as the policy of the Congresses is concerned we believe that the method which we employ is more important than the aim itself... we have specifically accepted and abided by the policy of non-violence, so that whatever we achieve through negotiation - altering the laws through Parliament, through the Government and so on - will be based on the democratic system. Violence would certainly destroy all that and that is not permissible at all as far as our organisation is concerned.

Is this the view in accordance with the teachings of Mahatma Gandhi? - That is so, my Lords...

Now I take it, Mr. Cachalia, that you do not have detailed knowledge of the activities and resolutions taken by the Congresses during the period after your banning in 1954. Is that correct? - That is so.

I presume, however, that you have been in personal contact with members of the Congress since your banning? - Yes. We meet socially and otherwise...

And have you attempted to keep yourself informed about Congress policy? - Yes.

MR. TRENGOVE:³⁸

My Lords, just in case the witness may be asked evidence as to what he was informed about Congress policy, we will object to that.

MR. JUSTICE RUMPF:

Yes.

MR. KATHRADA:

My Lords, I merely wanted to put one question to him; that is, from the information that you have gathered would you say that Congress policy has in any way changed since your banning?

MR. JUSTICE RUMPF:

³⁸ The prosecutor

No, he can't say that...

MR. KATHRADA:

I won't pursue the point, my Lord.

Now before you were banned, Mr. Cachalia, apart from the general political struggle of the Indian people, did the Congress concern itself with matters affecting the immediate welfare of the Indian people? - Yes.

Could you mention any specific matters with which it concerned itself? - Well, for instance it concerned itself with the education question, the question of immigration was brought up from time to time - health, social welfare matters, housing and so forth...

Take education for example, could you give us some idea as to what the Indian Congress did in the field of education? - Yes; as far as education was concerned, representations were made from time to time to the Government; also a substantial sum of money was collected so that schools could be built up; for instance, in Natal there are schools which are subsidised by the Government, and the other funds provided by the schools. In some cases we have put up independent schools as well. Congress did all those sorts of things in promoting schools and education.

Now you have already given evidence on the general attitude of the Congress on the Group Areas Act. Is it correct that since the passing of this Act in 1950 the Indian Congress devoted a considerable amount of time to this Act and its application to the people? - Oh, yes, naturally. It is a daily occurrence, when people get into difficulties, these matters are handled by the Congress; also the Group Areas Board with which the Congress deals.

Apart from the general political objection of the Indian Congress to the Act, are there any specific features of the Act that the Indian Congress objects to? - Yes. In the administration of the Act, for instance, immediately the Act came into operation the Minister started defining all the properties which were occupied by Indians in the Union. As a result of that our position - take the Transvaal from 1939 for instance and Natal from 1943, we were subjected to more hardships and difficulties for the simple reason that we could not extend our premises and if we did that there were already difficulties - we were already finding it difficult at that time to extend as the population grew, but since our properties were defined we could not extend and the congestion became so acute that our people have to live in very unhealthy conditions in places, and the people are facing real hardship...

With regard to the application of the Act in respect of the declaration of group areas, did the Indian Congress express its fears at the outset? - Yes.

And what were the fears of the Indian community in this regard? - That they would be uprooted from their established positions - this would affect their livelihood and so on, it would affect their whole lives.

Have group areas in fact been declared in recent years? - Yes.

Have you a personal knowledge of the effect of this proclamation in some areas? - Yes, particularly in the Transvaal. There are group areas declared in Carolin for instance, Ermelo, in the Western Transvaal - for instance in Ventersdorp, Rustenburg, in Northern Transvaal, Pietersburg, again in Pretoria, also in the western part of Johannesburg.

MR. JUSTICE KENNEDY:

Have they been put into effect? - There are time limits. Practically all these group areas were against the Indians and the communities will definitely be uprooted where they have been declared as I have mentioned. The time limit is set to each group area; evacuation will take place at a certain time. With the exception of Johannesburg, in other places the time has not expired yet. In Johannesburg the time has definitely expired.

MR. KATHRADA:

Now, on examination of these proclamations that have already been made, can you say whether Congress fears were justified? - Yes.

Can you give us a few examples? - The areas I have mentioned - in all these areas the Indian communities who have established themselves at the end of the last century in most cases, or at the beginning of this century - they will all be uprooted from their positions. It is a question of their livelihood - what they will do? What people will do in Rustenburg for instance, or what they will do in Ermelo, when the group areas really comes into operation and people will have to move. It is a question of life and death as far as they are concerned...

What was the hope of the South African Indian Congress with regard to the Europeans? - Well, my Lords, in our struggle we hoped that by this method of non-violent struggle we would be able to win over their sympathy and in fact during and after the Defiance Campaign, an organisation like the South African Congress of Democrats was set up - which organisation was working in alliance with the Congress movement. Apart from that there was the South African Labour Party which was very sympathetic towards the non-European cause and in fact some of the leaders are supporting the movement in some respects. Again, the Liberal Party was formed and they are coming very close to the non-Europeans in their demands. Recently I see that the Progressive Party was formed, and they too are coming much nearer towards our cause and they are much more sympathetic

to the non-Europeans. And I have formed the view that as a result of our passive resistance struggle we have achieved all that, and I am certain that if we carry on - and if the non-Europeans will have faith in non-violence - eventually we will be able to get the majority of the European population of this country on our side.

Has your organisation always gone out of its way to get European support, to win European support? - Oh, most certainly.

You mentioned the Congress of Democrats; were you present at the inaugural meeting of the Congress of Democrats? - Yes. I think I opened the conference.

Were representatives of the African National Congress there? - Yes, I think so.

Were you subsequently elected to the Executive Committee of the Congress of Democrats? - My Lords, the Conference went on for two days, Saturday and Sunday. I was there on the Saturday. I left, I think, in the afternoon, and eventually I understood that I was elected as an executive member of that organisation. When it became known it was discussed in our organisation and eventually I tendered my resignation. As a member of the Executive, I never participated in any of the deliberations of the Executive; I don't remember participating at all...

MR. JUSTICE KENNEDY:

Was there any reason why you resigned from the South African Congress of Democrats Executive Committee? I have been under the impression - I may be wrong - that only whites were elected to their membership? - Yes, my Lord, that was discussed in our Congress and it was decided that this organisation was meant for the whites only and therefore I should resign; consequently, I did resign.

MR. KATHRADA:

I think you mentioned that the Congress of Democrats was formed at the initiative of the African National Congress and the South African Indian Congress; is that correct? - Yes, my Lords...

To your knowledge, did the Congress of Democrats attempt to make the Indian Congress class conscious? - No. In fact, the Congress of Democrats supported us, more particularly in our fight in group areas where we were trying to safeguard our economic and trading rights, and if I understand that class struggle means elimination of those sort of things - those economic interests - then their support would naturally mean that they were actually supporting us in our economic interests. That question I don't think ever came up.

Was the composition of the Indian Congress derived from any one particular

class? - The Indian Congress?

Yes. - The Indian Congress is composed of all sections of the Indian community in that there are labouring classes, there are professionals, there are merchants, businessmen - all take part in this struggle. And, my Lords, that has been accepted from the very inception when Gandhi was here, so that this struggle should not become a movement for any one particular class, and it was always our duty to see that all sections of the population, all sections of the Indian community, are represented on the Congress and in the movement. Similarly, when the African National Congress, when we allied with them, we saw to it that all sections should be represented. Therefore when we got the support of the European population in the movement we were very happy indeed to see that they, too, came forward and worked in cooperation with the non-Europeans; so it would not become only a non-European campaign.

So to your knowledge would you say that the composition of the other Congresses as well was not restricted to any one particular class? - No.

Now, coming to the newspaper *New Age*, and the newspapers preceding *New Age*, are you aware that there was a newspaper called *Advance*? - Yes.

Was there any organisational connection between these newspapers and the Congress movement? - No...

What, to your knowledge, was the general attitude of the South African Indian Congress towards these papers? - Well, we supported the newspapers from the point of view that they had a large circulation, and in which news of our Congress was correctly set out. We had two other Indian papers, like *Indian Views* and *Indian Opinion* which were circulated particularly amongst the Indian communities, and therefore any of the Indian Congress news may not go outside that and other communities may not be well informed about our views. Therefore we supported the *New Age* because it gave quite a lot of news of the Indian Congress, more particularly on the group areas.

When you say *New Age* do you also refer to the papers that preceded it? - Yes, *Advance*...

Did the South African Indian Congress agree, or was it ever called upon to agree with the attitude of these papers in connection with such matters as Socialism or international affairs? - Well, we were not called upon to associate ourselves with or support any opinions that were expressed in these papers, as far as Socialism or any other ideas which may have appeared in the papers were concerned. That was not part of our struggle at all, so we were not concerned with it.

Do you know a magazine called *Fighting Talk*? - Yes.

Would you say the same thing about *Fighting Talk*? - Quite, yes.

Now, Molvi Cachalia, during January of 1955, did you leave South Africa? - Yes.

What was your destination? - India and Bandung.

Were you accompanied by anyone? - Yes, Mr. Kotane³⁹ was with me when I left.

Did any other person join you and Mr. Kotane during your journey to Bandung? - Yes, Mr. Nagdee joined us in London, and he also accompanied us to India and to Bandung.

Did you go to England first? - Yes.

Who is Nagdee? - He is my neighbour; he stays next to my house, and he is an Indian.

Is he a member of the Indian Congress? - He is not an active member of the Indian Congress but under the Constitution he is a member; but he does not take any leading part.

Were you sent by anybody to Bandung?... - The position was this. In India, particularly in Bombay State - from there the majority of the inhabitants of the Transvaal originated, or their ancestors may have come from that state - there was a Bill before the Assembly in connection with the absentee landlords - that is, the agricultural landlords, and most of our people who are living here in this country held some sort of estate in India. As a result of that there was talk that these properties would be taken over for the benefit of the people who stay in that village, and the Government wanted to do away with absentee landlords. And as a result of that there was discussion amongst a number of our people that somebody should go over and make some representation so that we could get some respite, and eventually dispose of our properties. As a result of that quite a number of people suggested to me that I should go over, and that while that was under discussion, my brother⁴⁰ told me that it would be a wise thing that as this Bandung Conference⁴¹ is about to be held I should go there too. That was afterwards discussed with a number of leading Indian people and I decided that I would go there as well. While this matter was under discussion I was told by my brother that it was understood that Mr. Kotane was also going and it would be a

³⁹ Mr. Moses Kotane, member of the National Executive Committee of the African National Congress

⁴⁰ Mr. Yusuf Cachalia, Secretary of the South African Indian Congress for several years

⁴¹ Asian-African Conference, Bandung, Indonesia, April 18-24, 1955

good thing if both of us went together; that discussion we had in regard to going over.

Now, of your own knowledge, do you know by whom Mr. Kotane was sent to Bandung? - Well, I learnt from Mr. Kotane that he was going on behalf of the African people.

Which countries sponsored the Bandung Conference? - The Bandung Conference was sponsored by India, Pakistan, Burma, Ceylon and Indonesia - they are what is called the Colombo Powers; they sponsored the Conference.

From which countries did the delegates to this Conference come? - Well, the invitations were sent, it appears, to the states of Africa and Asia.

Where is Bandung by the way? - Bandung is in Indonesia.

By whom was the Conference opened? - This conference was opened by the President of Indonesia, Dr. Sukarno.

What would you say were the aims and objects of the Bandung Conference? - The aims and objects of the Bandung Conference were to promote peace, also to discuss the question of colonialism and imperialism, and also to bring about better relations between the countries of Asia and Africa.

What was the interest of the South African Indian community in this conference? - My Lords, the Indian community was not invited to the Bandung Conference as delegates, because the delegates were only from the independent states. But as I mentioned before from time to time it was the policy of the Indian Congress to educate and get support outside South Africa in our struggle, and from that point of view the Indian people were interested in that conference.

When did you return to South Africa? - The following year, in April.

Before returning to South Africa did you visit any other countries? - On my way back?

Yes. - Yes, from Bandung I went to Thailand, that is the route I took, I stayed there for about three days, and then I had to go to Singapore, and from Singapore I went back to India where I stayed for quite a long time.

On your return to South Africa did you report to anybody on your mission to Bandung? - Well, I spoke and reported to some of the people with whom I had discussions before I left.

Did you visit any Communist countries? - No.

If you had had occasion to visit Communist countries, would you have done so? - Well, I wouldn't go out of my way, but if I would have had an occasion I would have gone to see things there as well.

While you were a member of the Indian Congress did various Congress leaders go abroad? - Yes.

Can you name some of them? - Yes, Mr. A. I. Meer went to America and England; Mr. Ashwin Choudhree, one of the South African Indian Congress leaders, went over; similarly Mr. Sorabji Rustomjee went over to England, Ireland, America, the United Nations, India; Mr. H. A. Naidoo went over; Mr. M.D. Naidoo went to America and India; Dr. Dadoo went to India on two occasions and he went to England too; Dr. G. M. Naicker went to India; of course they went to other places too - Nairobi and those places. There may have been others.

Did any of the Indian leaders visit Communist countries to your knowledge? - I think you yourself went to Hungary or somewhere...

Did the Indian Congress have any objection to its leaders visiting any Communist country? - No, not at all.

Just one last question about Bandung. Do you know if the following countries were invited to the Bandung Conference: Formosa, Israel and South Africa? - No, I don't think so. I don't know about Formosa, but I know about South Africa and I don't think Israel was invited.

I have no further questions, my Lords...

MR. CACHALIA:

My Lords, at this stage can I have the assistance of an interpreter?... I am finding some difficulty in expressing myself, my Lord.

MR. JUSTICE RUMPF:

So far you have expressed yourself very well in English. We will continue and see if it is necessary; if you find it really necessary we will see about it.

MR. KATHRADA:

My Lords, the witness told me that so far he managed because he was prepared for some of the questions, but he did express the fear that he would not be able to confidently answer questions in English under cross-examination.

M. JUSTICE RUMPF:

Well, we will see how he goes. Just proceed, Mr. Trengove.

And then this bulletin *Ten Fighting Years*, it talks about the history of the Transvaal Indian Youth Congress. Mr. Cachalia, when did Gandhi leave South Africa? - 1914.

So you yourself know very little about the actual work of Gandhi in South Africa? - Yes, but when I was in India I often used to see him.

What you say is what you have heard people telling you and what you have read? - My Lord, I am interested - I take Gandhi as my guide, you see, and therefore, I am particularly interested in Mahatma Gandhi. I follow as much as I can.

Now, after Gandhi left in 1914, there were quite a number of passive resistance struggles from time to time, is that correct? - No.

In South Africa? - No, only one, in 1946 and a token passive resistance in 1941.

Only those two? - Those two which are in active form, yes.

Who was the President of the Transvaal Indian Congress at the time Dadoo was elected...in 1946? - Mr. Valod, and after his death I think Mr. Minty, if I remember well.

Now you see, in the *History of the Transvaal Indian Youth Congress*, this is what the Indian youth say, on page 8 of this bulletin: "Ours is a child of history, born of necessity, as a result of corruption, opportunism, inefficiency and bureaucracy that marred Indian politics in the years since the departure of Mahatma Gandhi from the shores of South Africa." And then they say: "The Youth Congress came into being largely to provide the election machinery for the Dadoo group in its campaign to oust the reactionary discredited individuals who clung onto Congress. It started at the time as the Transvaal Indian Youth Volunteer Corps." Now do you know enough about the Indian Congress history to be able to say that after Gandhi left and up to the time that Dadoo was elected, the Congress movement was in the hands of reactionary individuals, and Congress history was marred by corruption and opportunism and inefficiency? Is that so? - It was so. But when they talk about being in the forefront when Dadoo came and proclaimed him as a leader, and now let us see, we take Mr. Moolla here, I don't know what his age is at present, but if you take that, practically most of those who are there, that was in 1939 when they tried to proclaim him leader of the Indian Congress, I think they must have been five or ten years old in those days. So what they say does not hold good.

You see, Mr. Cachalia, that whatever you might have done in 1939, it was only

in 1947 that the Dadoo group got control of the Indian Congress? - Yes, but in 1939 the Indian community supported us in such a way that we were about to launch the passive resistance and the whole Indian community was behind the movement at the time. That is what I wanted to convey...

Before you were banned, there were Speakers` Notes on the Western Areas which had been prepared? - Prepared by the Transvaal Indian Congress?

Prepared by the Congress Movement, I don't know who the author was, but the Indian Congress in Natal for instance recommended those lectures as a basis for instruction. Do you know of those lectures? - I don't know. You see, in Transvaal, when this matter was brought up in the Transvaal Indian Congress, certain people were appointed - that includes Mr. Naidoo, Y. A. Cachalia and some of them - to work and carry out the programme in the Western Areas. And some meetings were held, I remember, where they went and we did not go, and thereafter I was banned, and I don't know what transpired afterwards...

MR. JUSTICE BEKKER:

Can you recall the lectures which you did distribute, can you recall where they came from? - We prepared that.

Did you personally prepare them? - No, my brother and I, yes, one lecture we prepared ourselves. One was prepared by Dr. Dadoo I suppose, some were by Mr. Thandray. He was another secretary of ours, we prepared together, yes.

The lecture you and your brother prepared, can you recall? - The background of Indian history, yes.

Did it have a title? - The History of the Indian People, yes, the Struggle of Indian People, something like that.

The lecture prepared by Dr. Dadoo, do you recall the name of that? - The one was the history, the other one was the Struggle of the Indian People and so on. One was by Dr. Dadoo, I think the Struggles in South Africa.

That as far as you can remember was prepared by Dr. Dadoo? - Yes.

You and your brother prepared a lecture called The History of the Indian People? - That is right. Then we also had Dr. Dadoo's Addresses, various Addresses which I roneod and printed and we also circulated those, you see. Presidential Addresses and so on.

Do you remember any other lectures? - No. In 1946 struggle there were quite a number of booklets, you see, which were prepared by Dr. Dadoo, three or four. Then by M. D. Naidoo on the Round Table Conference, I think. I am talking of

1946, 1947, 1948, you see. One, I don't remember the title, but one booklet was prepared by George Singh from Durban, and so on...

MR. TRENGOVE:

Now, Mr. Cachalia, I want to ask you one or two questions about the Defiance Campaign. You said yesterday that about eight thousand defiers took part? - Yes.

Were they all people specially selected for the task? - Quite.

In the Eastern Cape, six thousand were selected? - I don't know, but they had a large number of volunteers there.

Very few Indian people in the Eastern Cape? - Very few.

Very few people who understand the teachings of Mahatma Gandhi and *satyagraha* in the Eastern Cape? - Yes. They understand the teachings, quite a number, yes.

In the Eastern Cape? - Yes.

Why is it that when you have got to select people with special qualifications, particular political background and outlook and what not, that you choose five thousand people in the Eastern Cape, and you choose about two hundred and fifty in Natal? - These are volunteers, and in this movement people come voluntarily. We make a call, and people come voluntarily. Now in the Eastern Cape more people came, that they like to defy and they wanted to become volunteers, and that is how they were accepted. It is not that we choose more at one place and less at one place. That was not the case.

You see, I am referring to this report of yours, A. 83. Here you say the Eastern Cape, 5,719; Natal, 246; Transvaal, 1,900.⁴² Weren't the Indians in Natal really enthusiastic about this Defiance Campaign? - Yes.

How many Indians are there in Natal? - Nearly four hundred thousand.

And 246 were approved? - Not approved. These are the people who came voluntarily. It is not that anybody was rejected. There may have been some rejections, but that is not the point. It is not a question of approval. It is a voluntary struggle and people come voluntarily; there is no force on anyone, and that amount of people reported, you see...

⁴² The figures for other regions were:

Western Cape, Mafeking and Kimberley - 423
Orange Free State - 258

Can you explain why you can only muster 246 volunteers out of four hundred thousand in Natal? - Well, less people reported. One of the causes may be that they first wanted to know whether this is a joint struggle going on with Africans, experience in the history, whether it will work well or not, you see. It is person's mind, you see, we don't know...

How many did you reject in the Transvaal? - I rejected very few.

One thousand and nine hundred offered themselves in the Transvaal? - Yes, very few.

You weren't really testing the people? - No, we were going into their backgrounds. I have accepted one who had a criminal record of about two years, and we accepted him and we wanted to put him in and see what reaction would be on him after he had served his imprisonment. Then he came back, and I asked him this question, I said now, what do you think of this? And he told me this, that it is far better to go to gaol for an honour than to do criminal things and go to gaol, and I was very satisfied about that.

Mr. Cachalia, you realise that it was a dangerous thing to mobilise a mass of people to defy laws unless they really understand *satyagraha* as you explained it yesterday? - We explained to them, we explained what is their duty, when they accept the position, we take them. If we feel that - the officer in charge of accepting, if he interviews and he feels that in spite of explanation we must reject him, then he would reject him...

I say you realised that in the Eastern Cape where 5,700 people were mobilised to resist and defy laws, that that created a state of unrest and an explosive situation in the Eastern Cape? - Not necessarily because of the struggle, no, not at all. The volunteers will, never do that, that is what I am saying...

MR. JUSTICE BEKKER:

After the Defiance Campaign started in the Cape, were things normal or were they not normal? - I think it was going on quite well, and we were happy that Eastern Cape people are carrying on the movement far advanced than all the other people are.

There were no incidents or disturbances? - No, my Lord, we never came across it. The only thing that we were considering at the moment was why the Eastern Cape has given us best support than any other part of the country, and I think if I remember correctly, we came to this conclusion. There were two factors you see, like Dr. Njongwe⁴³ was there, he was very popular, who was leading the movement there, and the other thing was that for instance you take any other centres, there is the Xhosa people, most of them are centred in Port Elizabeth and

⁴³ Dr. J. L. G. Njongwe, acting provincial President of ANC

therefore you see, when certain important people of that group of people appeals and that appeal goes very well, then quite a number of people join, and because of that, you see, these more people in numbers joined the struggle. That is what we thought at the time...

MR. TRENGOVE:

Mr. Cachalia, how many Indians are there in Durban? - Quite a number of them.

In 1952, how many of them? - Nearly three hundred thousand people.

How many Xhosas are there in Port Elizabeth? - I don't know the figure, but quite a number.

Not three hundred thousand? - Less, yes.

Dr. Njongwe, is his appeal to the Xhosas greater than Dr. Naidoo's⁴⁴ appeal to the Indians? - But there is a difference you see. We take for instance the passive resistance movement in Durban, where the bulk of the resisters came from Durban. But since then there were riots in Durban, and as a result of that people wanted to see how things go and perhaps, you see, therefore there was not that response. There may be other causes. Even the African people did not turn out. Again here in Durban, you see, the bulk of the population is Zulu population, and if one follows, a lot of people would follow with him, you see. But there again if Chief Lutuli would have been there at the time and things advanced as it is now, and Chief calls, half of Durban would come. We all wanted to go and defy. Those are the circumstances; it goes according to the circumstances...

Now the Defiance Campaign, one of the results was that it developed the political consciousness of the masses in this liberatory struggle? - Yes.

The Defiance Campaign was part of the liberatory struggle, was it not? - yes.

And the Defiance Campaign also prepared the people for future struggles that were still to come? - Yes.

And it tested the people to see what mass action can do? - Yes.

And it had to prepare the people not only for future struggles, but also for other forms of struggle? - Yes.

What other forms of struggle for instance? - In passive resistance there are boycotts for instance, there is non-collaboration...

⁴⁴ Presumably "Dr. Naicker's"

Strikes, too? - Yes, strikes.

And the sacrifices the people were called upon to make during the Defiance Campaign, they would at a later stage be called upon, after that, to make even greater sacrifices than the sacrifices they had to make in the Defiance Campaign? - Yes.

What sacrifices did they have to make in the Defiance Campaign? - Well, they go to gaol, they lose their jobs, people are suffering, I mean to go to sit in gaol, it is a great sacrifice by itself.

And what greater sacrifices had they to expect in future? - Well, say for instance, they lose their jobs for some reason or other, they have to come and work in the movement...

Wasn't that expected of the people during the Defiance Campaign? - Well, in the Defiance Campaign you see, it is for a month or a couple of months you see, but as the struggle goes on, it increases you see, the sentence may be five years, ten years eventually, and they must be prepared for all that. Their children may be isolated you see, they may suffer probably. If a certain person is sentenced for ten years or something, now he must be prepared, he mustn't grumble that I am going in for ten years. Now he must go and forget all about his children, whatever attachment they may have for those children. So you see, he must sacrifice all that. That sort of sacrifices are meant. A person may go on a strike for instance, and he loses his job, and he may never get a job, for six months, that is another sacrifice. You see, they must prepare for greater and greater sacrifices each time.

And they had to be prepared even to face death? - Of course, naturally. Say for instance we are in gaol, I may get pneumonia tomorrow and die there. Well, I must be prepared for it, my death. Of course I must be prepared for my death...

RE-EXAMINATION BY MR. KATHRADA:

JUNE 28, 1960

Molvi Cachalia, you were asked by the Crown whether you conducted your business in English or Undue, and your reply was that you conducted it in English. In which of these two languages are you more proficient? - In the Indian language.

You were also asked to explain why Communists were elected as the first volunteers during the Defiance Campaign of 1952 and your answer was that Mr.

J. B. Marks was President of the African National Congress, Transvaal, Dr. Dadoo was President of the SAIC and the rest of them were leading members of the Congress movement. Now, was the Suppression of Communism Act one of the unjust laws against which the Defiance Campaign was conducted? - That is so.

Do you know who the first victims of the Suppression of Communism Act were? Who were the first people to be banned? - The first people who defied...

The first people who were banned under the Suppression of Communism Act? - Those who defied.

Oh, were they the first people to be banned? - Yes.

In other words, the leaders whom you have named? - That is right.

Do you know when the Suppression of Communism Act was first applied against the Congress leaders? - In 1952. As far as I remember it was after the case where leaders were arrested under the Suppression of Communism Act...

Now do you know how many Communists there were on the Executive Committee of the Transvaal Indian Congress? - My Lords, the Communists among the Indian people in the Transvaal who were members of the Congress. As far as I can remember - the working committee that was composed of 80 members who were elected in the general meeting - there were three Communists on that committee who were elected, and apart from that there were two Communists, as far as I remember, in Pretoria; and apart from that there was another gentleman who was a Communist, and a member of the Communist Party; then there was a doctor who was a Communist Party member, who left this country but he did not take any part whatsoever. This man and the other Patel whom I have referred to have taken no part since 1952. And apart from those there may have been one or two Communists whom I may not know; but apart from that the entire Indian community, the entire Indian membership of the Indian Congress - there were no more Communists than those few I have mentioned.

You were also asked by the Crown as to why the Congresses failed to call off the Defiance Campaign when there were disturbances in Port Elizabeth. You remember there was some reference to riots in Port Elizabeth and East London. Now did these riots have anything to do with the Defiance Campaign? - No, not to my knowledge...

You told the Court that you met the editor of *Die Transvaaler*, or something to that effect? - Yes, that is correct.

Do you remember who the editor was at the time? - Yes, the Hon. the Prime Minister was the editor at the time...

